(18,720.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 492.

JAMES L. HYATT, AS CHIEF OF POLICE OF THE CITY OF ALBANY, N. Y., PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF CHARLES E. CORKRAN.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Return to writ of error	*a*	1
Papers on appeal to court of appeals	*b*	1
Statement	1	1
Petition for writ of *habeas corpus*	1	2
Writ of *habeas corpus*	4	3
Return of chief of police	5	4
Warrant of arrest	6	4
Traverse to return	8	6
Stipulation of conceded facts	9	7
Stipulation of additional facts	9*a*	7
Testimony taken on the hearing	10	8
Testimony of Charles E. Corkran	10	8
Order dismissing writ	13	10
Opinion of Mr. Justice Herrick	14	10
Order granting stay and fixing bonds	16	11
Notice of appeal to appellate division	18	13
Affidavit of no opinion	19	13
Order of affirmance in appellate division	20	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1902.

	Original.	Print
Order for stay pending appeal to court of appeals	21	14
Notice of appeal to court of appeals	22	15
Affidavit of no opinion in appellate division	23	15
Stipulation as to record on appeal	24	16
Remittitur from court of appeals	26	17
Opinion in court of appeals (Cullen, J.)	30	18
Opinion in court of appeals (O'Brien, J.)	40	27
Dissenting opinion in court of appeals (Haight, J.)	46	33
Petition for writ of error	52	39
Order allowing writ of error	55	40
Writ of error	58	40
Assignment of errors	61	41
Affidavit of service of citation	66	43
Citation	67	43
Clerk's certificate	69	44

a STATE OF NEW YORK:

Court of Appeals.

To the justices of the Supreme Court of the United States:

The judges of the court of appeals of the State of New York, do hereby make answer and return to the writ of error issued herein to said court by attaching hereto a transcript of the record and judgment of this court, in the case of The People *ex rel.* Charles E. Corkran, against James L. Hyatt, as chief of police of Albany, plaintiff in error, together with all things touching the same, which we certify and return under the seal of our said court to the Supreme Court of the United States and the justices thereof, as we are herein commanded.

In witness whereof, I have hereunto set my hand and affixed my official seal at the city of Albany, this twenty-seventh day of October, A. D., one thousand nine hundred and two.

Seal Court of Appeals, State of New York.

W. H. SHANKLAND, *Clerk.*

b In the Court of Appeals.

THE PEOPLE *ex Rel.* CHARLES E. CORKRAN, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, Respondent.

Papers on Appeal from Order.

Messrs. Scherer & Downs, attorneys for James L. Hyatt, as chief of police of the city of Albany, and Vernon Sharp, agent for the State of Tennessee.

Hon. George Addington, district attorney of Albany county.

Messrs. Moot, Sprague, Brownell & Marcy, attorneys for Charles E. Corkran.

1 In the Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany.

Statement.

Appeal from an order of the special term of the supreme court, held by Mr. Justice Herrick, at Albany, New York, March 19, 1902, filed March 20, 1902, in the Albany county clerk's office, dismissing a writ of *habeas corpus* granted herein on the 13th day of March, 1902, and refusing the application of the relator, to discharge him from custody.

Petition for Writ of Habeas Corpus.

Hon. D. Cady Herrick, justice of the supreme court of the State of New York:

The petition of Charles E. Corkran respectfully shows that
2 he is imprisoned and restrained in his liberty at the second precinct station-house in the city of Albany, N. Y., by James L. Hyatt, chief of police of the city of Albany; that he has not been committed and is not detained by virtue of any judgment, decree, final order, or process issued by a court or judge of the United States, in a case where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of legal proceedings in such a court; nor is he committed or detained by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in a special proceeding instituted for any cause except to punish him for a contempt; or by virtue of an execution or other process issued upon such a judgment, decree or final order; that the cause or pretence of the imprisonment or restraint of petitioner, according to the best knowledge and belief of your petitioner, is by virtue of an arrest made in pursuance of an executive warrant issued by the Hon. Benjamin B. Odell, Jr., governor of the State of New York, on two requisitions from the governor of the State of Tennessee, reciting that the petitioner has been indicted in the State of Tennessee for the crime of grand larceny and false pretences, and was a fugitive from the justice of the State of Tennessee.

Your petitioner further shows that his arrest and imprisonment is illegal, and he is unlawfully restrained of his liberty in that he is restrained of his liberty in violation of the law of the United States, namely, the act of February 12, 1793, section 5278 of the Revised Statutes of the United States, in this that the executive warrant, under which he is now restrained, shows that the crimes with which he is charged were committed in the State of Tennessee; that the papers accompanying the demand of the governor
3 of Tennessee are not authenticated as required by that act; that it nowhere appears that your petitioner was personally within the limits of the State of Tennessee at the time said alleged crimes are stated to have been committed; that the governor of the State of New York had no jurisdiction to issue his warrant in that it did not appear before him, that your petitioner was a fugitive from the justice of the State of Tennessee or had fled therefrom; that it did not appear that there was any evidence before the governor of the State of Tennessee at the time he issued his demand, that your petitioner was personally or constructively within the limits of the State of Tennessee when the crimes are alleged to have been committed; that it appears on the face of the indictment accompanying the requisitions of the governor of Tennessee that no crime under the laws of Tennessee is charged or has been committed; that your petitioner has been unable to procure a copy of

the executive warrant or the papers upon which the same was issued and therefore is unable to attach the same hereto.

Wherefore, your petitioner prays that a writ of *habeas corpus* issue, directed to said James L. Hyatt, chief of police of the city of Albany, commanding him that he have the body of said Charles E. Corkran, by him imprisoned and detained, together with the cause of such imprisonment and detention before Hon. D. Cady Herrick, justice of the supreme court of the State of New York, at his chambers in the city hall, in the city of Albany, N. Y., on the — day of March, 1902, at — o'clock.

Dated the 13th day of March, 1902.

CHARLES E. CORKRAN.

4 STATE OF NEW YORK, } ss:
City and County of Albany, }

Charles E. Corkran, being duly sworn, says that he has heard read the foregoing petition and knows the contents thereof, and that he believes it to be true.

CHARLES E. CORKRAN.

Subscribed and sworn to before me, this 13th day of March, 1902.

H. M. SCHLESINGER,
Com. of Deeds, Albany, N. Y.

Writ of Habeas Corpus.

In the name of the People of the State of New York, to James L. Hyatt, chief of police of the city of Albany:

We command you that you have the body of Charles E. Corkran, by you imprisoned and detained, as it is said, together with [L. S.] the time and cause of such imprisonment and detention by whatsoever name the said Charles E. Corkran is called or charged, before Hon. D. Cady Herrick, justice of the supreme court, at his chambers in the city hall, in the city of Albany, on the 17th day of March, 1902, at 9.30 o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said Charles E. Corkran, and have you then there this writ.

Witness: Hon. D. Cady Herrick, one of the justices of the supreme court of the State of New York, the 13th day of March, one thousand nine hundred and two.

JOHN FRANEY, *Clerk.*

MARK COHN,
Petitioner's Attorney.

(Endorsed:) Allowed this 13th day of March, 1902. D. Cady Herrick, justice supreme court.

5 *Return to Writ of Habeas Corpus.*

Supreme Court.

PEOPLE OF THE STATE OF NEW YORK on the Relation of CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y., Defendant.

To the supreme court of the State of New York:

The return of James L. Hyatt, chief of police of the city of Albany, to the writ of *habeas corpus* hereto annexed.

Obedient to the command of the annexed writ, I do hereby certify the return:

That before the said writ came to me and on the 13th day of March, 1902. Charles E. Corkran, named therein, was in my custody and detained by me, as chief of police of the city of Albany, under and by virtue of a warrant issued by the governor of the State of New York for the extradition of said Charles E. Corkran, charged with the commission of the crime of larceny and false pretenses in the State of Tennessee, a copy of which warrant is hereto annexed and made part of this return:

That the said Charles E. Corkran is still in my custody and by me detained by virtue of said warrant.

All of which I certify and I have here the body of said Charles E. Corkran, as by the said writ I am commanded.

Dated March 17, 1902.

JAMES L. HYATT,
Chief of Police of the City of Albany, N. Y.

6 In the name of the People of the State of New York, to James L. Hyatt, chief of police of the city of Albany:

We command you that you have the body of Charles E. Corkran, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said Charles E. Corkran is called or charged, before Hon. D Cady Herrick, justice of the supreme court, at his chambers in the city hall, in the city of Albany, on the 17th day of March, 1902, at 9.30 o'clock in the forenoon, to do and receive what shall then and there be considered concerning the said Charles E. Corkran, and have you then there this writ.

[L. s.]

Witness: Hon. D. Cady Herrick, one of the justices of the supreme court of the State of New York, the 13th day of March, one thousand nine hundred and two.

JOHN FRANEY, *Clerk.*

MARK COHN,
Petitioner's Attorney.

Warrant of the Governor.

STATE OF NEW YORK,
Executive Chamber.

The governor of the State of New York to the chief of police, Albany, N. Y., and the sheriffs, undersheriffs, and other officers of and in the several cities and counties of this State authorized by subdivision 1 of section 827 of the Code of Criminal Procedure to execute this warrant:

It having been represented to me by the governor of the State of Tennessee that Charles E. Corkran stands charged in that
7 State with having committed therein in the county of Davidson, the crimes of larceny and false pretences, which the said governor certifies to be crimes, under the laws of the said State, and that the said Charles E. Corkran has fled threfrom and taken refuge in the State of New York; and the said governor of the State of Tennessee having, pursuant to the Constitution and laws of the United States, demanded of me that I cause the said Charles E. Corkran to be arrested and delivered to Vernon Sharpe, who is duly authorized to receive him into his custody and convey him back to the said State of Tennessee; which said demand is accompanied by copies of indictment and other documents duly certified by the said governor of the State of Tennessee to be authentic and duly authenticated and charging the said Charles E. Corkran with having committed the said crimes and fled from the said State and taken refuge in the State of New York;

You are hereby required to arrest and secure the said Charles E. Corkran wherever he may be found within this State and thereafter and after compliance with the requirements of section 827 of the Code of Criminal Procedure to deliver him into the custody of the said Ve-non Sharpe, to be taken back to the said State from which he fled, pursuant to the said requisition; and also to return this warrant and make return to the executive chamber within thirty days from the date hereof of all your proceedings had thereunder, and of the facts and circumstances relating thereto.

Given under my seal and the privy seal of the State, at the capitol in the city of Albany, this 13th day of March, in the year of our Lord, one thousand nine hundred and two.

[L. S.] B. B. ODELL, JR.

By the governor,

JAMES G. GRAHAM,
Secretary to the Governor.

8 *Traverse to Return.*

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y.

STATE OF NEW YORK, *City and County of Albany,* } ss:

Charles E. Corkran, being duly sworn, says that he denies that he committed either the crime of larceny or false pretences, or any other crime in the State of Tennessee; he further denies that he was within the State of Tennessee at the times mentioned in the indictments upon which the requisition of the governor was issued, and upon which the warrant of the governor of the State of New York for his surrender was granted; that he has read the indictments before the governor of the State of New York, upon which his warrant of arrest was issued, and those indictments charge him with the commission of the crime of larceny and false pretences on the 20th and 30th days of April, 1901, the 8th day of May, 1901, and the 17th day of June, 1901, and 24th day of June, 1901. Deponent further says that he was not in the State of Tennessee at any time in the months of March, April, May or June, 1901, or any time for more than a year prior to the month of March, 1901. Deponent further denies that he fled from the State of Tennessee or that he is a fugitive from the justice of the State of Tennessee.

9 Deponent further says that he has heard read the papers accompanying the requisition of the governor of the State of Tennessee to the governor of the State of New York, and that said papers do not contain any evidence or proof that said Charles E. Corkran was in the State of Tennessee at any stated time since the 26th and 27th days of May, 1899, and do not contain any evidence or proof that said Charles E. Corkran was in the State of Tennessee on any day in any of the months set forth in said indictments when the said crime or crimes are alleged to have been committed.

CHARLES E. CORKRAN.

Sworn to before me, this 17th day of March, 1902.

H. M. SCHLESINGER,
Com. of Deeds, Albany, N. Y.

Stipulation of Conceded Facts.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y.

It is conceded that the relator was not within the State of Tennessee between the first day of May, 1899, and the first day of July, 1901.

It is also conceded that the relator was in the State of Tennessee on the 2nd day of July, 1901.

Dated March 17th, 1902.

SCHERER & DOWNS,
Attorneys for Defendant.
MARK COHN,
Attorney for Petitioner.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany, N. Y.

The following additional facts are hereby conceded, and the same shall be incorporated in the appeal record herein, as a part thereof, and shall constitute a part of the record upon which the appellate division may hear and determine the appeal herein; *i. e.*

It is hereby stipulated by and between the parties to the above-entitled special proceeding that three indictments were attached to the requisition papers sent by the governor of the State of Tennessee to the governor of the State of New York for the extradition of Charles E. Corkran; that each of the said indictments was found on the 26th day of February, 1902, and that the alleged crimes were charged in said indictments to have been committed on the 1st day of May, 1901, on the 8th day of May, 1901, and on the 24th day of June, 1901, respectively.

Dated, Albany, N. Y., April 25th, 1902.

MOOT, SPRAGUE, BROWNELL & MARCY, *Attorneys for Relator.*
SCHERER & DOWNS,
Attorneys for Defendant.

10 *Testimony Taken on Hearing, March* 17, 1902.

CHARLES E. CORKRAN, being duly sworn, testifies as follows:

By Mr. MARK COHN:

Q. You are the relator in these proceedings?
A. I am.
Q. Where are you domiciled?
A. I live at the Chelsea, New York city. Have been living there for fourteen months.
Q. And where is your residence—where is your home?
A. Lutherville, Maryland.
Q. And your business?
A. My principal place was in New York city.
Q. Where were you on the 2nd day of July, 1901?
A. At Nashville, Tenn.
Q. What was your business there?

Here Mr. Downs objected, considering that Mr. Corkran's business in Tennessee was of no concern, but the court decided that he could answer.

A. I went there on behalf of the Chequasset Lumber Company, which was a heavy stockholder, owning practically all of the stock of the American Hardwood Company (about $100,000.00), to accept the resignation of S. D. Albright, president and treasurer of the American Hardwood Company, so as to protect its funds from further theft, he having embezzled a large amount.

Mr. Downs here again objected to the testimony in regard to Mr. Albright's theft, saying it was immaterial. Mr. Cohn being
11 perfectly satisfied to have that stricken out, his object being to show what Mr. Corkran's business was there. The court, however, allowed the answer to be given, and witness continued:

And to notify the Union Bank and Trust Company that Mr. Albright's resignation had been demanded, and would probably be accepted that day. It was obtained, and after it was obtained, the Union Bank & Trust Company was notified.
Q. By you?
A. By me; and minutes produced, showing that I was elected president and treasurer of the company on the 2nd day of July, 1901. I got in town about nine o'clock in the morning, and left at night about 7.30 or 7.45 at night.
Q. The Union Trust Company, is that the company that claims it was defrauded, and upon which claim these indictments were found against you?
A. Yes; the Union Bank & Trust Company.
Q. And you have never been in the State of Tennessee since that time?
A. Yes; I have never been to Nashville; have passed through there. Don't remember just when. The 16th or 17th of July

went to Chattanooga. Did not stop in Nashville at all, and was not in Nashville.

Q. What was your business there?

A. I went down there to investigate the lumber; to find out how much lumber we had in the yard at Chattanooga.

Q. That is, that the American Hardwood Company had in the yard at Chattanooga?

A. Yes; to see whether it tallied with the report which was left by Albright, as to the value of it. I think that is all.

Mr. Downs:

Q. You have not been in the State of Tennessee since the 16th of July, 1901, at the time you went to Chattanooga?

A. No, sir; I have not.

12 Q. What was your position in the Chequasset Company?

A. I was president of it.

Q. And how many shares of stock did that company own in the American Hardwood Company?

A. I don't remember just the number of shares; they owned $99,000.00 (and some odd dollars). Don't remember exactly.

Q. Out of $100,000.00?

A. Yes.

Q. And how many shares did you own in the Chequasset Company?

Mr. Cohn objected, as being immaterial. Court decided that the answer should be given.

A. I cannot tell exactly how many shares I owned in that company. It was about $65,000.00 of the capital stock.

That is all.

Judge:

Q. Have you ever lived in the State of Tennessee?

A. No, sir.

Q. Did you ever reside there for the purpose of doing business at all?

A. Never.

Mr. Downs here desired to ask one more question:

Q. Were you there in Tennessee at the time of the incorporation of the American Hardwood Company?

A. No, sir.

Q. And wasn't there since about May 26th or 27th, 1899?

A. No, sir.

That is all.

13 *Order Dismissing Writ, March* 19, 1902.

At a special term of the supreme court of the State of New York, held at the city of Albany, N. Y., on the 19th day of March, 1902.
Present: Hon. D. Cady Herrick, justice.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Plaintiff,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant.

Upon the petition for a writ of *habeas corpus* herein filed, and the writ of *habeas corpus* thereon issued, and upon the return thereto filed, and upon the proceedings and testimony had before the court, and after hearing Mark Cohn, Esq., for the relator, and J. Murray Downs in opposition thereto, it is now on motion of Scherer & Downs, attorneys for the defendant,

Ordered, that the said writ of *habeas corpus* be and the same is hereby dismissed, and the said relator, Charles E. Corkran, is hereby remanded back to the custody of the defendant, James L. Hyatt, as chief of police of the city of Albany, N. Y.

D. CADY HERRICK,
Justice Supreme Court.

14 *Oral Opinion of Mr. Justice Herrick, March* 19, 1902.

In the Matter of THE PEOPLE on the Relation of CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police.

This is an application made to me for a writ of *habeas corpus* to inquire into the cause of the detention of Mr. Corkran by the chief of police, and it appears that that detention is by reason of the mandate of the governor, issued upon the requisition of the governor of Tennessee.

The question presented in this case, so far as I can discover, has never been squarely passed upon by the courts of this State, or by the Supreme Court of the United States. It is an interesting and novel question. The question is presented as to what is a fleeing from justice, within the meaning of the Constitution and statutes of the United States, requiring the governor of one State to deliver to another State a fugitive from justice. The crimes stated to have been committed by this man are alleged to have been committed on the 30th day of April, the 8th day of May, and the 17th and 24th days of June, 1901. It is conceded that Corkran was not within the State of Tennessee from the 1st day of May, 1899, to July 2nd, 1901. In other words, that he was not within the State of Tennessee at the time of the alleged commission of these crimes. The crimes charged

are of that nature that they may be committed within a State although the person charged with committing them is not physically present in that State. Then it appears, however, undisputed that he was in the State of Tennessee on the 2nd day of July, and again on the 16th or 17th of July, 1901. That is, that he was within the jurisdiction of the State of Tennessee at a time after the alleged commission of the crime. When this indictment was found does not appear,—whether
15 prior to his appearance in the State of Tennessee, or whether subsequent to it; but as I stated before, it does appear that he was upon these two occasions within the jurisdiction of the State after it is charged that he committed the crimes, and he is now found without the jurisdiction of the State. It presents a novel question. I have not had time to write an opinion upon it and express my views fully in relation to it; but it seems to me that it is a case that comes within the spirit, if not the letter, of the Constitution and of the laws of Congress in relation to the extradition of persons charged with crime. The question is so novel and important that I think that it should be passed upon deliberately by our courts, and while I dismiss the writ of *habeas corpus* and remand the petitioner to the custody of the chief of police I will also at the same time, at the request of the petitioner's counsel, grant a stay until twelve o'clock noon tomorrow, to enable him, if he sees fit, to make an application to some other justice for a stay, which I assume will be followed by an application to release him upon bail. I do this because I do not wish the business of the circuit to be interrupted by arguments. I do not feel that I have the time, in justice to litigants and jurors, to give to it, and I do not see that I am called upon at this time to undergo any more labor than is actually necessary. So that you may take the stay, and make your application to some other justice, stating to him the reasons why I do not wish to entertain it at this time myself, because I am engaged in the trial of a case, and I have all the work I can attend to, and have had for the last four months.

16 *Order Granting Stay and Fixing Bail.*

At a special term of the supreme court of the State of New York, held at chambers in the city of Albany, on the 19th day of March, 1902.

Present: Hon. Alden Chester, justice.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, as Chief of Police of the City of Albany.

The writ of *habeas corpus* issued herein on the 13th day of March, 1902, having been dismissed and the application to discharge the

relator denied by Mr. Justice D. Cady Herrick, on the 19th day of March, 1902, and the said justice having made an order remanding the relator to the custody of James L. Hyatt, chief of police of the city of Albany, and granting a stay of proceedings to enable the relator to apply to any justice of the supreme court of the State of New York for a stay of proceedings and to be liberated on bail pending the decision of an appeal from the order of Mr. Justice D. Cady Herrick, denying the application of the relator for his discharge, and an application having been duly made to Mr. Justice Alden Chester, justice of the supreme court of the State of New York, at his chambers in the city of Albany, New York, on the 19th day of March, 1902, for a stay of proceedings herein and to admit the relator to bail pending the appeal from the
17 said order of Mr. Justice D. Cady Herrick, now after hearing Mark Cohn, Esq., of counsel for Charles E. Corkran, the relator herein, in favor of such application, and J. Murray Downs, Esq., of counsel for James L. Hyatt, chief of police of the city of Albany, and Vernon Sharp, agent of the State of Tennessee, in opposition, and due deliberation had, it is

Ordered that a stay of all proceedings under the order of the special term of the supreme court held by Mr. Justice D. Cady Herrick, made on the 19th day of March, 1902, remanding the custody of the relator to James L. Hyatt, chief of police of the city of Albany, N. Y., and denying the application of relator to be discharged from imprisonment, be and the same hereby is granted until the decision of the appellate division of the supreme court of the State of New York, third judicial department, on the appeal taken herein to the said appellate division of the supreme court, third judicial department, from the said order of Mr. Justice D. Cady Herrick.

It is further ordered, that the said Charles E. Corkran be admitted to bail pending said appeal in the sum of seventy-five hundred dollars, in an undertaking to be approved by a justice of this court, on notice to the counsel for the said chief of police, and on the filing and approval of said undertaking, the said Charles E. Corkran be liberated and discharged from arrest; and that in the meantime, and until the giving and approval of said undertaking, the said Charles E. Corkran remainin the custody of James L. Hyatt, chief of police of the city of Albany, within the jurisdiction of this court, to wit, in the county of Albany, N. Y.

Enter.

ALDEN CHESTER,
Justice Supreme Court.

18 Personal service of the foregoing order admitted this 20th day of March, 1902.

GEORGE ADDINGTON,
District Attorney.

SCHERER & DOWNS,
Attorneys for J. L. Hyatt, as Chief, &c., and Attorneys for Vernon Sharp, as Agent and Individually.

Notice of Appeal.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany.

Take notice, that the above-named relator hereby appeals to the appellate division of the supreme court, third judicial department, from the order of the special term of the supreme court held by Mr. Justice Herrick, made on the 19th day of March, 1902, and entered in the office of the clerk of the county of Albany, on March 20th, 1902, dismissing the writ of *habeas corpus* granted herein on the 13th day of March, 1902, and refusing the application of the relator, to discharge him from imprisonment and remanding him to the custody of the said James L. Hyatt, chief of police of the city of Albany, and from each and every part thereof.

Dated, the 19th day of March, 1902.

Yours, &c.,

MARK COHN,
Attorney for the Relator.

19 Office and post-office address, 62 and 64 State street, Albany, N. Y.

To James L. Hyatt, chief of police of the city of Albany; Sherer & Downs, Esqs., attorneys for Vernon Sharp, agent for the State of Tennessee, and attorneys for James L. Hyatt, chief of police of the city of Albany; George Addington, Esq., district attorney of Albany county; John Franey, Esq., clerk of the county of Albany.

Affidavit—No Opinion Filed.

Supreme Court.

THE PEOPLE *ex Rel.* CHARLES E. CORKRAN
against
JAMES L. HYATT, as Chief of Police of the City of Albany.

STATE OF NEW YORK, *City and County of Albany,* } *ss.:*

Mark Cohn, being duly sworn, says that he is one of the attorneys for the relator and appellant herein; that the justice before whom the hearing herein took place did not render or file an opinion concerning the order of March 19, 1902, save the oral opinion hereinbefore set forth.

MARK COHN.

20 Sworn to before me, this 5th day of April, 1902.

H. M. SCHLESINGER,
Com. of Deeds, Albany, N. Y.

At a term of the appellate division of the supreme court, third department, held at its court-room in the city of Albany, N. Y., on the 23d day of May, 1902.

Present: Hon. Charles E. Parker, presiding justice; Hon. Walter Lloyd Smith, Hon. S. Alonzo Kellogg, Hon. Emory A. Chase, Hon. Edgar L. Fursman, associate justices.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Plaintiff, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant, Respondent.

The appeal from the order made at a special term of the supreme court of the State of New York, held at chambers in the city of Albany, N. Y., on the 19th day of March, 1902, dismissing a writ of *habeas corpus* issued on the petition of Charles E. Corkran and denying the application of the said Charles E. Corkran to be discharged from custody, coming on to be heard at this court, and on
21 reading and filing the papers on appeal herein, and after hearing Adelbert Moot, Esq., for the relator, and J. Murray Downs, Esq., for the defendant, it is now, on motion of Scherer & Downs, attorneys for the defendant-respondent,

Ordered that the said order appealed from be and the same hereby is unanimously affirmed in all things.

JOSEPH H. HOLLANDS, *Clerk.*

[SEAL.]

A copy.
JOSEPH H. HOLLANDS, *Clerk.*

Appellate Division, Supreme Court.

PEOPLE on the Relation of CHARLES E. CORKRAN
against
JAMES L. HYATT, as Chief of Police of the City of Albany.

The appeal in the above-entitled proceeding having been heard at the appellate division, and the order dismissing the writ and denying the application of the relator to be discharged having been affirmed, and the relator intending to appeal to the court of appeals, and, after hearing Frank L. Sage for the relator and J. Murray Downs for the defendant in opposition, it is now, on motion of Messrs. Moot, Sprague, Brownell and Marcy, attorneys for the relator,

Ordered that all proceedings on the warrant of the governor be and the same are hereby stayed, until the hearing and de-
22 termination of this matter by the said court of appeals.

And it is further ordered that the said Charles E. Corkran be admitted to bail pending said appeal on condition of his filing a bond to the People of the State of New York in the penal sum of seventy-five hundred dollars ($7,500), such bond to be approved by

a justice of this court; said bond to be filed within a week from the date of this order.

Dated May 24, 1902.

EMORY A. CHASE,
Justice Supreme Court.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran
against
JAMES L. HYATT, Chief of Police of the City of Albany.

Take notice that the above-named relator hereby appeals to the court of appeals from the order of the appellate division of the supreme court, third judicial department, entered in the office of the clerk of Albany county on the 26th day of May, 1902, affirming the order of the special term of the supreme court, made on the 19th day of March, 1902, and entered in the office of the clerk of Albany county on the 20th day of March, 1902, dismissing the writ of *habeas corpus* granted herein on the 13th day of March, 1902, and
23 refusing the application of the relator to discharge him from imprisonment, and remanding him to the custody of the said James L. Hyatt, chief of police of the city of Albany, and from each and every part thereof.

Dated the 24th day of May, 1902.

Yours, etc.,
MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Relator.

Office and post-office address, 45 Erie Co. Savings Bank bldg., Buffalo, N. Y.

To James L. Hyatt, chief of police of the city of Albany; Scherer & Downs, Esqs., attorneys for Vernon Sharp, attorneys for the State of Tennessee, and attorney- for James L. Hyatt, chief of police of the city of Albany; George Addington, Esq., district attorney of Albany county; John Franey, clerk of the county of Albany.

Appellate Division, Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Plaintiff, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant, Respondent.

STATE OF NEW YORK, }
City and County of Albany, } *ss:*

Frank L. Sage, being duly sworn, deposes and says that he
24 is a clerk of the law firm of Moot, Sprague, Brownell & Marcy, attorneys for the relator above named, and that no

opinion was filed by the appellate division in the above-entitled matter.

FRANK L. SAGE.

Sworn to before me this 24th day of May, 1902.

ANNA E. BURKE,
Com. of Deeds, Albany, N. Y.

In the Court of Appeals.

THE PEOPLE *ex Rel.* CHARLES E. CORKRAN, Appellant,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, Respondent.

It is hereby stipulated by and between the parties to the above-entitled action, by their respective attorneys, pursuant to section 3301 of the Code of Civil Procedure, that the foregoing printed papers are true, correct and complete transcripts and copies of the originals thereof filed in the office of the clerk of the county of Albany, and of all the papers and testimony used before the court on the hearing and determination of the writ of *habeas corpus* herein, and of each and every part thereof, and of the oral opinion of the court, and are hereby deemed for all purposes certified, and may be used and filed with the same force and effect as if certified
25 by the court. The certificate of the county clerk required by section 1353 of the Code of Civil Procedure is hereby waived.

Dated the 31st day of May, 1902.

SHERER & DOWNS,
Attorneys for James L. Hyatt, as Chief of Police of the City of Albany, and Vernon Sharp, Agent for the State of Tennessee.

GEORGE ADDINGTON,
District Attorney of Albany County.

MOOT, SPRAGUE, BROWNELL & MARCY,
Attorneys for Charles E. Corkran.

26 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 7th day of October, in the year of our Lord one thousand nine hundred and two, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, October 8th, 1902.

27 THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CHARLES E. Corkran, Appellant,
ag'st
JAMES L. HYATT, Chief of Police of the City of Albany, Respondent.

Be it remembered, that on the 5th day of June, in the year of our Lord one thousand nine hundred and two, Charles E. Corkran, relator, the appellant in this proceeding, came here into the court of appeals, by Moot, Sprague, Brownell and Marcy, his attorneys, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the third judicial department. And James L. Hyatt, chief of police, &c., the respondent in said proceeding, afterwards appeared in said court of appeals by Scherer and Downs, his attorneys.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

28 Whereupon, the said court of appeals having heard this proceeding argued by Mr. Adelbert Moot, of counsel for the appellant, and by Mr. J. Murray Downs, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is reversed, and relator discharged.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

29 Therefore, it is considered that the said order be, and the same hereby is, reversed &c., &c., as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *October 8th*, 1902.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

30 THE PEOPLE *ex Rel.* CHARLES E. CORKRAN, Appellant,
v.
JAMES L. HYATT, as Chief of Police of the City of Albany, Respondent.

(Decided October 7, 1902.)

Appeal from a judgment of the appellate division of the third department affirming a final order dismissing a writ of *habeas corpus* and remanding the relator to custody.

Adelbert Moot for appellant.
J. Murray Downs and *Robert G. Scherer* for respondent.

CULLEN, *J.:*

The relator was arrested and held under a mandate or warrant of the governor of this State issued on the requisition of the governor of the State of Tennessee for the delivery of the relator as a fugitive from justice. The mandate of the governor recites that it has been represented to him that the relator stands charged in the State of Tennessee with having committed the crime of larceny and false pretenses in the county of Davidson, and that he had fled from said State and taken refuge in the State of New York. By stipulation between the parties it was conceded that the indictments attached to the requisition papers under which the governor issued his warrant were found on the 26th day of February, 1902, and that the alleged crimes charged in the indictments were committed on May 1st, 1901, May 8th, 1901, and June 24th, 1901, respectively. At the hearing had on the return of the writ of *habeas corpus* it was further stipulated between the parties that the relator was not in the State of Tennessee at the time of the commission of any of the offenses charged against him, but in the State of Maryland, which was his residence. It appeared by his testimony that he went to Nashville in Tennessee on the second day of July, 1901, to accept the resignation of one Albright, the president and treasurer of the American Hardwood Company, in which the relator was interested, and was then elected president of the company in said Albright's stead; that that evening he left Nashville and never was again in the State of Tennessee except passing through there on the 16th or 17th of July. It is not claimed that the offenses for which the extradition of the relator was sought were committed when he was in the State of Tennessee, but it is contended that though not corporeally present at the time of the commission of the offense he may nevertheless be properly surrendered as a fugitive from the justice of that State where it was committed.

It is to be premised that the power of a government to punish for extraterritorial crimes is a very different question from that of its right to require the surrender to it from foreign countries for trial and punishment persons alleged to have committed such offenses. Some governments assume to impose the obligations of their penal

laws either in whole or part on their citizens, no matter
31 where they may be. We have a notable example of this rule in the recent punishment of an English peer for an alleged bigamy committed in the United States. Some governments assume to go even further and punish an alien for an offense committed against their citizens, even though the offense is committed in a foreign jurisdiction. Publicists and writers on international law differ greatly as to the right of a government to punish for offenses committed without its territory. A full review of this subject is to be found in the work of Mr. John Bassett Moore, late Assistant Secretary of State of the United States, on "Extraterritorial Crime." The power of any government to punish for such an offense necessarily depends upon its ability to obtain possession of the defendant; and though each government assumes to define its own powers, still it may be restrained by the action of the government of which the offender is a citizen, invoked on his behalf, as was the case in the controversy between this country and Mexico in relation to which the report of Mr. Moore was written. Not so with extradition between the States of the Union; it is not governed by international law, but depends solely on the provisions of the Constitution of the United States and the act of Congress made from it. The power of a State to punish a fugitive from justice after obtaining custody of his person depends in no way on how that custody was obtained. Even if the offender has been kidnapped in another State and brought within the territory of the prosecuting State, that fact does not affect the jurisdiction of the latter to punish him for the offense. (*Kerr v. Illinois*, 119 U. S. 436; *Cook v. Hart*, 146 U. S. 183.) Nor will a person be relieved from prosecution at the intervention of the State from which he was abducted by violence. (*Mahon v. Justice*, 127 U. S. 700.) In *Lascelles v. Georgia* (148 U. S. 537) it was said: "If the fugitive be regarded as not lawfully within the limits of the State in respect to any other crime than the one on which his surrender was effected, still that fact does not defeat the jurisdiction of its courts to try him for other offenses any more than if he had been brought within such jurisdiction forcibly and without any legal process whatever." It was there held that interstate rendition did not depend on comity or contract, but on the provisions of the Constitution of the United States. It will thus be seen that the condition of a citizen of one State surrendered to another for criminal prosecution has not the safeguards which exist in international extradition, for the surrendering State is without any standing to intervene in his behalf however much its process may have been abused. Therefore, it necessarily follows that no person can or should be extradited from one State to another unless the case falls within the constitutional provision, and that the power which independent nations have to surrender criminals to other nations as a matter of favor or comity is not possessed by the States.

The provision of the Constitution of the United States, (art. 4,
32 sec. 2, subdiv. 2) is: "A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority

of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." Under this Congress has enacted (sec. 5278): "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit * * * charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested * * * and to cause the fugitive to be delivered * * *." It will be seen that to authorize or require a State to surrender to another State an alleged offender it is necessary not only that such person shall stand charged with crime, but that he shall flee from justice. What constitutes a fugitive from justice has been the subject of much discussion by eminent text writers and of many decisions by the courts and by the governors of the several States. There seems to be substantial unanimity in all the authorities on one proposition, that to be a fugitive from justice a person must have been corporeally present in the demanding State at the time of the commission of the alleged crime. "The case, and the only case, for which the Constitution provides, is that of a person who is charged with crime in one State and who flees to and is found in another State. This is the whole of the case." (Spear on Extradition, 311.) "The question of constructive presence at the commission of a crime has frequently arisen in the case of obtaining money or goods by false pretenses, and it has been held that such presence in the demanding State is not sufficient as a basis for a requisition for the surrender of a person as a fugitive from justice, although, if the person charged were to come within the jurisdiction of that State, he might be arrested and punished for the false pretenses there committed while he was corporeally elsewhere." (Moore on Extradition, sec. 584.) In *Matter of Reggel* (114 U. S. 642) it was said by Mr. Justice Harlan: "Undoubtedly, the act of Congress did not impose upon the executive authority of the Territory the duty of surrendering the appellant, unless it was made to appear, in some proper way, that he was a fugitive from justice. In other words, the appellant was entitled, under the act of Congress, to insist upon proof *that he was within the demanding State at the time he is alleged to have committed the crime charged*, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process." In *Roberts v. Reilly* (116 U.S. 80) it is said by Mr. Justice Matthews: "To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the
33 party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having *within a State* committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction

and is found within the territory of another." In *Matter of Voorhees* (3 Vroom, 141) a fugitive is designated as one "who commits a crime within a State and withdraws himself from such jurisdiction." In *Wilcox v. Nolze* (34 Ohio State, 520) it is said, referring to the constitutional provision: "These words, taken as they must be in their natural and obvious sense, do not include a case of constructive presence in the demanding State and constructive flight therefrom, but relate only to a case where the accused is actually present in the demanding State at the time he commits the act of which complaint is made." The same principle has been held in *Hartman v. Aveline* (63 Ind. 344); *Jones v. Leonard* (50 Iowa, 106); *Matter of Mohr* (73 Ala. 503); *In re Jackson* (2 Flippin, 183); *Ex parte Smith* (3 McLean, 121). It is stated in a note found in Mr. Moore's work on Extradition (p. 948) that "the Interstate Extradition Conference held in New York city in August, 1887, refused to adopt a recommendation to the governors of the various States and Territories that no demand be complied with where the fleeing was constructive, on the ground that the decisions of the courts already covered the case."

Hibler v. State (43 Texas, 197) is not in conflict with these authorities, for there a fugitive from justice was defined to be "A person who commits a crime in one State for which he is indicted, and departs therefrom and is found in another State." The only case cited as authority for a contrary doctrine is *In re Cook* (49 Fed. Rep. 823), reported in the Supreme Court as *Cook v. Hart* (146 U. S. 183). In the opinion there delivered by the district judge it is said: "One may commit an offense against a State upon whose soil he has never set foot." I have already said this may be true, but it has nothing to do with the question whether the offender is a fugitive from justice. In that case the petitioner was under arrest in Wisconsin, having been extradited by the governor of the State of Illinois. He sought relief from imprisonment by writ of *habeas corpus* from the United States circuit court for Wisconsin. The question of the propriety of his extradition was, therefore, not properly before the court, and the decision of the circuit court remanding the relator was affirmed by the Supreme Court on the express ground that it was immaterial how the relator's presence in Wisconsin had been secured; that it was sufficient that at the time of the writ he was subject to its territorial jurisdiction. Nor did the case in fact require from the learned judge the statement cited. The relator was charged with having as a banker fraudulently received deposits. He had been in the State of Wisconsin a few days before, and know-
34 ing the bank to be insolvent, gave his clerks directions to receive deposits. His subsequent departure from the State, under all the authorities, made him a fugitive from justice.

The question discussed has never been passed upon by the courts in this State, but has been considered by several of our governors. In *Matter of Mitchell* (4 N. Y. Crim. Rep. 596) will be found an opinion by Governor Hill on an application for the extradition of Thomas Mitchell. Mitchell was charged with having committed manslaughter in Jersey City by reason of his ownership of an unsafe building in that place which fell and killed four persons. It ap-

peared that Mitchell had not been in New Jersey for some weeks prior to the accident. The governor refused to extradite him, holding that "The actual presence of the accused party in the demanding State, at the time of the commission of the alleged offense, is a jurisdictional fact." This view has been accepted by the governors of Massachusetts, of Maryland, of Tennessee and of Illinois. (See Moore on Extradition, sec. 579 *et seq.*) It is claimed that this court has held a contrary doctrine in *Adams v. People* (1 N. Y. 173). The defendant Adams was indicted and convicted for obtaining money under false pretenses under a fraudulent warehouse receipt which he transmitted from Chillicothe, in Ohio, to the prosecutors, merchants in New York city. The case in no respect involved the question of the constitutional obligation of the governor of Ohio to surrender the defendant to the authorities of the State of New York, but only of the power of this State to punish him after having secured jurisdiction of his person. Under the authorities already cited from the Supreme Court of the United States it was of no importance how the jurisdiction of his person was obtained.

If the relator was not otherwise subject to extradition to the State of Tennessee, because he was not personally present in that State at the commission of the alleged offenses, his subsequent presence in the State for a single day, nearly a year before the institution of any prosecution against him, could give that State no right to require his surrender. The question is whether he is a fugitive from justice, not whether the courts of the State of Tennessee *have* jurisdiction of his alleged offenses. That jurisdiction they had at all times, if at all, provided they could secure his person. I am at a loss to imagine how a man's voluntary visit to a State can constitute him a fugitive from the State when he was not such before. I should consider it as having exactly the contrary effect. If there be any force in this occurrence it must be not in his going into the State but in his failing to remain there. It is not, however, suggested that he in any respect offended against the laws of Tennessee while present there. He went there for a specific purpose, and his business accomplished, immediately left. It is not pretended that his stay was curtailed or he left the State on account of any suspicion of a prosecution. Would he have been liable to extradition because on a journey to New Orleans his route passed through the State
35 of Tennessee? Such a result seems to me utterly unreasonable. No distinction can be drawn between the two cases. In the case of *Adams*, already referred to, the prisoner sought discharge from arrest by *habeas corpus*, and the opinion of Judge Vanderpoel of the superior court of the city of New York denying the application is found in 7 Law Rep. (p. 386). Adams came voluntarily in the State, and after making an engagement to meet one of the prosecutors, suddenly left the State and failed to keep his engagement. The decision proceeded on the ground that the evidence justified the inference that the prisoner prematurely departed from the State with the view of avoiding arrest and prosecution for his crime. The case has not escaped criticism, though possibly its doctrine may be correct when limited to the facts of the case; that

is to say, a departure from the State to avoid prosecution, of which there is no suggestion in the case before us. In truth, however, the questions discussed by the court were not properly before it at all. They could have been raised in the State of Ohio, but not in New York.

It is urged that this doctrine of the necessity of corporeal presence in the State where the offense is alleged to have been committed would render the several States asylums for criminals, the effect of whose offenses was injury to property or persons in other States. There is no practical danger of the kind. It may be safely stated that nearly every State, as well as our own, punishes crimes committed within the State, although the results of the crimes are effected without its territory. Of course, the relator would be properly surrendered to the State of Maryland, where he was at the time of his alleged offense, if that State made demand for him. On the other hand, there is great danger that citizens may be carried into other States to be punished for acts which are not criminal in the jurisdiction in which they were committed. The case of false pretenses is a notable example. By our Penal Code (sec. 544) it is provided that "A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged." This was doubtless dictated by the knowledge that criminal charges of false pretenses are often instituted in reality to compel the payment of debt, and are easily fabricated. It may be that this provision of the code has no extraterritorial effect, and that a citizen of this State if found in another State may be punished there for alleged oral pretenses made here. But neither the Constitution nor the Federal statute requires this State to surrender him for prosecution in another jurisdiction. These considerations equally apply to prosecutions for libels alleged to have been committed in newspapers published here and circulated throughout the country. The real evil of the day is not the insufficiency of the criminal laws, but the excessive multiplication of statutory crimes, though we are not in condition to reproach our sister States for this fault when it is remembered that but
36 recently a person might, in this State, be imprisoned for the term of one year for feeding a sparrow (chap. 641, Laws 1887) and that even now notices are found in all public conveyances that a person who spits on the floor is subject to imprisonment for the same period.

It is suggested (though not by counsel) that I have construed the stipulation of the counsel for the State of Tennessee too broadly and that it was intended to admit only that the defendant was not in Tennessee at the particular dates alleged in the indictment, not that he was absent from Tennessee at the commission of the offenses charged against him. The brief of the learned counsel entirely disposes of this suggestion. He makes but two points: 1. "A person charged with crime may be extradited although he was not within the demanding State at the time of the commission of the alleged offense;" 2. "The supreme court is limited on *habeas corpus* to review but one

question, namely, the question of identity." I have, therefore, but followed the counsel's own construction of his admission.

We now reach the question whether the action of the governor can be reviewed on *habeas corpus*. It has been held by the Supreme Court of the United States in *Robb v. Connolly* (111 U. S., 624) that the governor of a State in the execution of the duty of surrendering fugitives imposed by the Constitution and the statute of Congress does not act as a United States officer and that a writ of *habeas corpus* may be issued by the State courts to test the validity of an arrest under his warrant. In *Roberts v. Reilly* (*supra*) it was said: "How far his (the governor's) decision may be reviewed judicially in proceedings in *habeas corpus*, or whether it is not conclusive, are questions not settled by harmonious judicial decisions, nor by any authoritative judgment of this court." In *Cook v. Hart* (*supra*) it was held: "We have no doubt that the governor upon whom the demand is made must determine for himself, in the first instance at least, whether the party charged is in fact a fugitive from justice, *but whether his decision thereon be final is a question proper to be determined by the courts of that State.*" The constitution and laws of the State of New York, therefore, control the decision of the question we are now considering. While doubtless to a certain extent the action of the governor is executive or ministerial, it is not so in the broad sense in which the general functions of the office are conferred upon him by our constitution. In *Matter of Guden* (171 N. Y., 529) we have held that the power given to the governor to remove a sheriff upon charges and after a hearing was executive and the exercise of that power not subject to review by the courts. But the question here is of an entirely different character. It involves the liberty of the citizen. Speaking of the division of powers among the three great branches of the Government, Parker, Ch. J., in the *Guden* case said: "There resides in the people of this and every State an absolute power to prescribe rules of action, through legislation, to enforce rules of action and to transact generally
37 the affairs of government, through executive acts, and to determine controversies between, enforce rights belonging to, and redress wrongs done to, citizens of the State, through the courts." The liability of the citizen to arrest and detention, and the grounds therefor, therefore, necessarily present a judicial question, though the arrest and detention are effected by an executive or ministerial officer. The act of Congress provides that a copy of the indictment or the affidavit before a magistrate shall be proof of the charge of crime against any person whose extradition is sought, but it does not prescribe what shall be evidence that he is a fugitive from justice. The fact that he is a fugitive is, therefore, a matter of proof. While the warrant of the governor is presumptive evidence of the fact, there is no reason on principle why it should be conclusive. It was said by Judge Jenkins in *Matter of Cook* (*supra*), referring to the case of *Roberts v. Reilly:* "That decision by its very terms implies that the action of the governor is only presumptively regular, and can be reviewed by the courts. Surely it cannot be claimed that such action is conclusive upon personal right, and may not be

inquired of by judicial tribunals. Surely it cannot be that the right to personal liberty hangs upon so slender a thread as the arbitrary will of the authorities of the demanding and surrendering States. 'No person shall be deprived of life, liberty or property without due process of law.' That is the fundamental law of the land, coming to us from Magna Charta. It is not due process of law which condemns without hearing, which convicts without trial. * * * It is essential to compliance with such executive demand that the person whose surrender is demanded should be adjudged a fugitive from the justice of the demanding State. The decision of the executive is not conclusive of that fact." The writ of *habeas corpus* is in this State available to every person imprisoned or deprived of his liberty, unless he is restrained under the authority of the Federal Government, or unless he is committed by virtue of a final judgment or decree of a competent tribunal of jurisdiction, or the final order of such a tribunal punishing him for contempt. The warrant of the governor is not a final judgment nor a decree, and even were it such it would be the duty of the court to see whether the jurisdictional facts exist which are necessary to authorize the action of the governor. The provision of section 827 of the Code of Criminal Procedure, directing that any person arrested on the governor's mandate shall be brought before a judge of a court of record and informed of his right to a writ of *habeas corpus* to inquire into his identity with the person named in the warrant does not assume to limit the inquiry on a writ of *habeas corpus* to the question of identity. It was enacted for the benefit of any person arrested under such a warrant and solely as an additional safeguard against illegal removal from the State. As was held in *People ex rel. Tweed v. Liscomb* (60 N. Y., 560), "This writ cannot be abrogated, or its efficiency curtailed, by legislative action. * * * The
38 remedy against illegal imprisonment by this writ, as it was known and used at common law, is placed beyond the pale of legislative discretion, except that it may be suspended when public safety requires, in either of the two emergencies named in the Constitution." If, therefore, on the return to the writ it was clearly shown that the relator was not a fugitive from justice and there was no evidence from which a contrary view could be entertained, which is the fact in this case, as appears by the stipulation and concession of the parties, there is no reason why greater efficacy should be given to the warrant of extradition than to the warrant of any other magistrate by which a citizen is imprisoned or deprived of his liberty. In *People ex rel. Lawrence v. Brady* (56 N. Y. 182) this court discharged the relator, who was held under a warrant of extradition issued by the governor of the State on the ground that the affidavit on which the surrender was asked did not state a crime. In *People ex rel. Draper v. Pinkerton* (77 N. Y. 245) the only question decided was whether the warrant of the governor recited the facts necessary to confer authority under the Constitution and laws of the United States and was sufficient justification for holding the prisoner to be brought up on *habeas corpus* without producing the papers or evidence upon which the governor acted. It was held that the recitals were to be

taken as *prima facie* true, no proof to the contrary having been introduced by the prisoner. In *People ex rel. Jourdan v. Donohue* (84 N. Y. 438) again the only question was the sufficiency of the executive warrant on its face. Referring to criticisms that had been made on the decision in the *Lawrence* case the court said: "And hence we have held that where the preliminary papers upon which a warrant of extradition has been granted are produced, and are before us, it is our right and our duty to examine them, and judge and determine, when our process is invoked, whether they are sufficient, under the law, to justify the warrant of extradition. Our ruling in this respect has not escaped criticism; but an opposite conclusion, which would make the determination of the executive final, even though the papers produced clearly showed that the essential preliminaries of the law were unfulfilled, does not yet commend itself to our judgment." In all these cases the question related to the sufficiency of the charge of the prisoner, not to his being a fugitive. But if the courts can review the action of the governor on one prerequisite for extradition, it is difficult to see why they cannot equally review his action on the other. The great weight of authority in other States is in favor of such a review. It was so held in the cases of *Jones v. Leonard* (*supra*), *Wilcox v. Nolze* (*supra*), *Hartman v. Aveline* (*supra*) and *Matter of Mohr* (*supra*). In the *Wilcox* case it is said: "Whether or not the accused committed the acts complained of while actually present in the demanding State is jurisdictional, and it is clearly competent, in such case, to show by parol evidence a defect in the executive power, however regular the extradition papers may be in matter of form." In the *Jones* case it is said:
39 "The governor of this State is not clothed with judicial powers, and there is no provision of the Constitution or laws of the United States or of this State which provides that his determination is final and conclusive in the case of the extradition of the cit-zen. In the absence of such a provision we hold that the decision of the governor only makes a *prima facie* case; that it is competent for the courts in a proceeding of this character to inquire into the correctness of his decision, and discharge the prisoner." In the *Mohr* case the learned court said: "We are of opinion that the probate judge did not err in discharging the petitioner, and that it was competent for him to hear oral evidence in order to establish the fact that the petitioner was not a fugitive from justice. Any other conclusion than this would establish a doctrine very dangerous to the liberty of the citizen. It would greatly impair the efficacy of the proceeding of *habeas corpus*, which has been often characterized as the great writ of liberty, and may be regarded, not less than the right of trial by jury, as one of the chief corner-stones in the structure of our judiciary system. It might justly be considered as alarming to announce that a writ which has so frequently been used for centuries past to prevent the encroachment of kings upon popular liberty is inadequate for the just purposes for which it has been invoked in this case."

There is little to be added to what has been so well said by the jurists of other States. The further suggestion, however, may be

made, that no law gives a person sought to be extradited the right to a hearing before the governor or to submit evidence in his behalf. Whatever in these respects may be accorded by the governor to the accused is a matter of favor, not of right. Therefore, unless he may review his extradition on *habeas corpus*, a citizen, on the fiat of an executive officer, without a hearing, may be transported a prisoner to the utmost confines of the country. It has been held by the Supreme Court of the United States that in the case of foreign extradition there must be some competent evidence before the magistrate to authorize the surrender of the accused. (*Ornelas v. Ruiz*, 161 U.S. 502.) But if the orders made below are upheld, in the case of interstate extradition, a citizen may be surrendered without the slightest evidence either of his guilt or that he is a fugitive.

Of course, the guilt or innocence of an alleged fugitive from justice is not to be determined on requisition proceedings, nor on the writ of *habeas corpus*. Therefore, if the charge was such as to necessarily require the presence of the accused within the State at the time of the commission of the offense, mere proof of an alibi would not in every case require or justify his discharge. But the question in the present case is not one of alibi, for the stipulation of the parties admits that the defendant was not personally present in the State of Tennessee at the commission of the alleged offenses.

For these reasons the order of the special term and the appellate division should be reversed and the relator discharged from custody.

40 O'BRIEN, *J.*:

I agree with Judge Cullen in his exposition of the principles applicable to this case. It may possibly be useful to add to this very clear and able exposition of the law some suggestions with a view of eliminating from the case certain considerations that are misleading and wholly foreign to the questions involved and a word with respect to the functions of the writ of *habeas corpus* and the procedure thereon in cases of interstate extradition. It is declared by statute to be a State writ to inquire into the cause of detention and in a proper case to discharge the person from all restraint of his liberty. In some cases the writ cannot issue at all, namely in cases where the restraint or detention is by virtue of a mandate from a court or judge of the United States in cases where such court or judge has exclusive jurisdiction. Neither can it issue in a case where the party is detained by virtue of the final judgment or decree of any competent tribunal civil or criminal. (Code, sec. 2016.)

The applicant for the writ must show affirmatively in his petition that he is not detained under any such process, and should it appear upon the hearing that he is, then he must be remanded. (Code, secs. 2032–'33.) In other words, when certain facts are made to appear as the cause of the detention the inquiry can go no farther, but must stop and the applicant must be remanded, however unjust in point of fact his detention may be. In all other cases there are no limitations upon the scope of the inquiry, but it must proceed until the issue is determined according to the rules of law applicable to such

a case. The burden in the first instance is upon the officer or party who detains the person to show that such detention is authorized by some legal authority.

The relator in this case was not detained under process from any court, civil or criminal, but under an executive warrant commanding the defendant to deliver him to an agent of another State, to be brought to that State for trial upon a charge of crime alleged to have been commited in that State, and hence all the facts were open to inquiry. The defendant made return to the writ that he detained the relator under this warrant, but exhibited no other document or paper to sustain the warrant. The warrant on its face stated that it had been represented to the governor of this State by the governor of the State of Tennessee that the relator was charged in that State with the crime of larceny and false pretenses and that he had fled from that State and taken refuge in this State. These statements on the face of the warrant were to be taken as presumptively true in the first instance, and, if the inquiry rested there, the defendant had made out a *prima facie* case to justify the detention. It is important here to note and to keep always in view that when the defendant presented the executive warrant without any other document or paper or any other proof of the facts therein stated he raised only a presumption. The warrant did not conclusively establish the facts recited. It was so held by this court (*People ex rel. Lawrence v. Brady*, 56 N. Y. 182), and the law as laid down
41 in that case has never been modified but has been repeatedly approved. Indeed, I do not understand that there is now any difference of opinion as to the legal effect of the warrant as evidence. It raised a presumption but nothing more. I am not aware of any case in any court of controlling authority where it was held to be conclusive and no reason is given why it should be.

But a mere legal presumption is good and justifies an act only until it is removed by proof of some other fact, and when so removed the act stands without authority or justification. That, in my opinion, is just what happened in this case as will appear hereafter. It must be borne in mind all the time that we know nothing and can know nothing judicially concerning the facts or circumstances of the larceny and false pretenses charged in the warrant. The record does not even contain the indictment or any paper or proof as to the facts, if any, that transpired in the demanding State. All we know or can know are the things recited in the warrant. The statute provides (Code, sec. 2039) that the relator may, under oath, deny any material allegation of the return or state any fact to show that his detention was illegal or that entitled him to his discharge. The relator did so traverse the return and thus put the facts stated in the warrant in issue. The court thereupon was required to proceed in a "summary way to hear the evidence" and dispose of the case as justice required. The relator proved one material fact conclusively and that was that he was not within the demanding State at the time of the commission of the crime as that fact was averred in the indictment. I do not mean that his oath on that point was conclusive, but the proof was of a higher charac-

ter, namely, the stipulation of the respective attorneys in open court. These were admissions upon the record that import absolute verity for all the purposes of the inquiry and they had the legal effect to remove every presumption to the contrary that arose from the face of the warrant. (1 Greenleaf's Ev. sec. 186.) It is important to understand the real scope and effect of these admissions. They were (1) That three indictments were attached to the requisition papers upon which the warrant was issued and as they were not produced we know nothing as to their contents except as stated in the admission and that statement was: (2) That all of them were found on February 26, 1902, and the alleged crimes were charged in the indictments to have been committed on May 1, 1901, May 8, 1901, and June 24, 1901, respectively. So that we simply know that the relator was charged with three distinct offenses of larceny and false pretenses committed on the dates above stated. (3) It was also admitted and stipulated that the relator was not within the State of Tennessee between May 1, 1899, and July 1, 1901, but was in that State on July 2, 1901.

These are all the facts that the demanding State elected to disclose upon the hearing of the writ of *habeas corpus* as the grounds for taking the relator from this State against his will into
42 another jurisdiction. Not a single fact is before us that raises any question as to the constructive presence of the relator in the demanding State on the dates named in the indictment or that would warrant even the suspicion that he committed the crimes charged by means of an innocent agent. All that is said upon that subject is pure conjecture without any fact upon which to build up the speculation. On the record before us the relator was presumptively personally present in the demanding State at the dates named and there took and carried away the property claimed to have been stolen or he did not and could not commit the offense charged in that State at all. It having been conclusively established that the relator was not in the demanding State on the dates when the crimes are charged to have been committed, it follows that he could not have committed the offenses and certainly could not have *fled* from the justice of the demanding State. The authorities are unanimous in holding that a person cannot be a fugitive from the justice of the demanding State who was not in that State when the crime charged is alleged to have been committed. Constructive presence furnishes no basis for executive action. The cases on that subject are collected in a note to the case of *State of North Carolina v. Hall* (28 L. R. An. 289). The presumption arising from the recitals in the executive warrant was completely overthrown by the admissions upon the hearing before the court that the relator was not in the demanding State at the dates when it was alleged that the crimes were committed, and this left the warrant, under which the relator was in custody, without any basis upon which to rest.

This proposition is met only in one way and by one line of argument which should now be noticed. It is suggested that since the relator was in the demanding State on the 2d day of July, 1901, for a few hours on a temporary errand of business, that he may have

committed some or all of the crimes charged while there on that day, and that since the precise dates stated in the indictment are not material, it may be shown upon the trial that he actually did commit the crimes on that day and hence this court should send the relator to the demanding State for trial. This suggestion may possibly have the merit of ingenuity, but as a method of reasoning or argument, or as a judicial utterance in a case involving personal liberty, it is to be hoped that this court will not adopt it. The State of Tennessee and its agent were represented at the hearing upon the writ by able counsel. All the facts and circumstances constituting the alleged crimes were open to inquiry. It could have been shown that there was or might have been a mistake in stating the dates in the indictment, or it could have been shown that the crimes were actually committed on the 2d day of July following, but nothing of the kind was claimed or even suggested. The demanding State, its agent and counsel, for some reason, elected to withhold all proof of the facts and circumstances of the alleged larcenies and to stand upon the bare recitals in the warrant.

43 The *prima facie* proof that the State gave, consisting only of the recitals of the warrant, that the relator was personally present there at the dates named and committed the crimes, was superseded and removed by the solemn and conclusive admissions in open court that he was not there at the time, and consequently could not have fled from justice. When the prosecution alleges and proves a larceny committed at a designated time and place, and makes no claim that it was committed at any other time or place, and the accused then shows by conclusive proof that he was not in the State on the days designated, nor for a year before, nor for eight days after, and the case rests upon these facts alone, without any proof to justify even a suspicion that the crime was committed eight days after the date laid in the indictment, it would be a strange rule of law that would permit the case to go to the jury in order to procure a finding that, after all, the time laid in the indictment was a mistake and the crime was committed by the accused at the later date.

But the case of *Roberts v. Reilly* (116 U. S. 80) is cited to sustain this line of argument, and an expression of the learned judge who spoke for the court is made prominent. This court and every other court has often commented upon the value of isolated judicial expressions in an opinion as authority. The facts of the case upon which the decision was based must be compared with the one in hand in order to enable us to interpret the decision and the language of the opinion. The difference in the facts of that case and the one at bar is so radical and fundamental that it will be seen at a glance that it has no application.

(1.) In that case the State of New York, the demanding State, took a very different course from that adopted by the demanding State in the case at bar. It did not rest its right upon the recitals of the warrant, but produced all the papers upon which it issued, thus disclosing to the court all the facts and circumstances constituting the crime charged. The warrant was there supported by all the pre-

ceding facts and the recitals became wholly immaterial; not so here, since the recitals give us all the light we have, and they are conclusively contradicted by the admissions of record.

(2.) Not only did the court have all the papers before it, but proof was given *dehors* the record as to all the facts and circumstances of the crime. There was full disclosure and nothing was withheld, so that at the close of the hearing the question whether the accused was or was not a fugitive from justice was one of fact. Not so in this case, since, after the admissions, we have not a single fact left to show that the relator fled from the State of Tennessee.

(3.) In that case there was nothing but the oath of the accused that he was not in the demanding State at the time charged in the indictment, and that was of no consequence against all the other proof to show that he was. His oath was not conclusive, whereas in the case at bar we have an admission that is conclusive
44 that he was not in the State at the time, and nothing to place against it unless we are to presume that the crime was committed on the 2d day of July, when no one claims that it was. The court ought not to presume that the crime was committed on that day against the allegations of the indictment and without any claim from any source that it was. If presumptions are to be made in such a case, they should be in favor of personal liberty and not against it.

But the question whether the relator committed larceny in the State of Tennessee at any time when he was personally present there is not really in the case at all, since there is not now and never was any serious claim that he was in that State when the crimes charged were committed, otherwise than constructively. Constructive presence in the demanding State is the sole basis of the claim that the relator fled from its justice, and as already suggested, there is no case or authority that I am aware of that sustains such a claim. All the cases are the other way, and we must either disregard these cases or adopt the fiction that the offenses were really committed by the relator while he was in the State on July 2d, 1901.

It may before closing be profitable to call special attention to a case quite similar, since it shows how such cases as this are considered and disposed of by courts in the demanding State of Tennessee. I refer to the case of *State of Tennessee v. Jackson* (1 L. R. An. 370) which is quite instructive. It appears that Jackson resided in Chicago. He sold to the prosecutor, who resided at Chattanooga, a horse, the bargain having been made by correspondence. The horse was shipped to the purchaser by rail at the place last named and he remitted by mail to Jackson at Chicago the purchase price. When the horse arrived his qualities were found to be such that the purchaser claimed to have been defrauded out of the price by false and fraudulent statements. He proceeded to obtain a warrant from a justice of the peace at Chattanooga against Jackson in Chicago, charging him with obtaining money by fraud and placed the warrant in the hands of a detective who made an affidavit that Jackson had fled from the State of Tennessee and had taken refuge in the State of Illinois. On this affidavit and warrant he procured

a requisition from the governor of Tennessee on the governor of Illinois for the delivery to him of Jackson. Armed with these papers the detective proceeded to Illinois and obtained a warrant from the governor of that State for the arrest of Jackson. He arrested him on the warrant, hurried him off to Tennessee and there had him tried before the justice of the peace, convicted and sent to jail. It will thus be seen that Jackson was not only extradited from his home in another State but actually tried and convicted in the demanding State. But Jackson sued out a writ of *habeas corpus* in Tennessee and was discharged on the ground that all the proceedings were based upon a falsehood, namely, that he had fled from Tennessee where he had never been before.

The opinion of the court is very brief but pointed. After
45 citing the act of Congress the learned judge said: "According to the provisions of this law there must be not only the commission of the crime, but the person charged must be a fugitive from the State in which it was committed before the executive authority can be called into action. Jackson was not a fugitive. He had not in all his life been in Tennessee; had never fled from it; and his case did not fall within the positive terms of this law. The oath of the detective was false, and the governors of the two States imposed upon. The whole proceeding was a fraud upon the law. If this arrest and imprisonment are to be maintained the opportunities for wrong and abuse of law will be great and widespread. Commercial transactions are largely conducted by mail and by telegraph. If the seller at one end of the line and the buyer at the other, with the aid of detectives, in cases of dispute and controversy among them, are to be allowed, under such proceedings as these, to have the citizens of one State carried to another State for trial under the allegation that the person charged has fled, instances of oppression may not be few."

It would be quite difficult to point out any material distinction between that case and the one at bar. It is quite clear that should we send the relator to Tennessee he would be entitled there to his discharge by the same court that discharged Jackson on the facts now before us. That court held that the accused party could not be deprived of his liberty by executive action based upon the false affidavit of a detective that he had fled from Tennessee to Illinois. That, in my opinion, is a safe precedent to follow in this case. Some one in this case has made just such an affidavit. That must follow from the admission that the relator was not in the demanding State at the times stated in the indictment as the dates when the alleged crimes were committed. On the hearing in this case upon the return of the writ, the State of Tennessee could have shown all the facts and circumstances of the alleged crime for which it had demanded the surrender to it of the person of the relator, as this State did in the *Roberts case* (*supra*). But instead of taking that course, all the facts and circumstances are left clouded in mystery, except so far as they are disclosed by the admissions referred to. When it admitted that the relator was not in the State at the times laid in the indictment, and gave no other light as to the facts, the case for

detention failed. The State of Tennessee does not ask for the surrender of the relator on the ground that he committed any crime in that State on the 2d day of July, 1901, nor does it even suggest that its prosecuting officer made any mistake in stating the 24th of June as the true date of the commission of the offense. The relator is claiming the benefit and protection of the laws of this State which guarantee to him his liberty against all unlawful restraint. If he has actually fled from the justice of the demanding State, of course he ought to be surrendered; but it is admitted that he did not, and it is safe to say that no one believes for a moment that he did except, possibly, in the same way and in the same sense that Jackson
46 fled from the same State in the case cited. Personal liberty must rest in this State upon a very frail and unsafe basis if this court can be induced to send the relator to Tennessee upon such a vague and fanciful conjecture as that which is at the foundation of the fiction that he may in fact have committed the crime on the 2d of July, and that the prior dates stated by the prosecuting officer of that State are the result of some error or mistake. When the State of Tennessee, or some one authorized to speak for it, is willing to assure us that the suggestion is based upon fact and not upon fiction, it will be timely then to entertain it, but until then the courts of this State should treat its solemn admission upon the record according to its fair scope and meaning, which obviously is that the relator was not in the State when the crimes charged were committed. I am in favor of reversing the order.

HAIGHT, *J.* (dissenting):

The relator was arrested by the respondent and held in custody by virtue of a warrant issued by the governor of the State of New York, in which the respondent was required to arrest the relator and deliver him into the custody of one Vernon Sharp, to be taken back to the State of Tennessee, from which he had fled, pursuant to a requisition of the governor of that State. The warrant recites the following facts as having been established before the governor of this State. "It having been represented to me by the governor of the State of Tennessee that Charles E. Cochran stands charged in that State with having committed therein, in the county of Davidson, the crimes of larceny and false pretenses, which the said governor certifies to be crimes under the laws of said State, and that the said Chas. E. Cochran has fled therefrom and taken refuge in the State of New York; and the said governor of the State of Tennessee having, pursuant to the Constitution and laws of the United States, demanded of me that I cause the said Chas. E. Cochran to be arrested and delivered to Vernon Sharp, who is duly authorized to receive him into his custody and convey him back to the said State of Tennessee, which said demand is accompanied by copies of indictments, and other documents, duly certified by the said governor of the State of Tennessee to be authentic and duly authenticated, and charging the said Chas. E. Cochran with having committed said crimes *and fled from the said State* and taken refuge in the State of New York."

Cochran procured a writ of *habeas corpus* to issue for the purpose

of obtaining his discharge. On the return of the writ, the attorneys for the parties stipulated "that three indictments were attached to the requisition papers, sent by the governor of the State of Tennessee to the governor of the State of New York, for the extradition of Chas. E. Cochran, that each of said indictments was found on the 26th day of February, 1902, and that the alleged crimes *were charged in said indictments* to have been committed on the 1st day of May, 1901, on the 8th day of May, 1901, and on the 24th day of June, 1901, respectively." It was further conceded by coun-
47 sel of the respective parties "that the relator was not within the State of Tennessee between the 1st day of May, 1899, and the 1st day of July, 1901." It was also conceded that the relator "*was* in the State of Tennessee on the 2d day of July, 1901." Taking the two stipulations together, it appears that the relator was not in the State of Tennessee on the dates charged in the indictment, but that he *was* in that State eight days after the date charged in the last indictment. In no place is it stipulated that he was not in the State at the time the offenses charged were committed. If this was an accidental omission, it has not been supplied by any of the evidence before us. The relator subscribed and verified the petition upon which the writ of *habeas corpus* was issued. In it he alleges "that *it did not* appear that there was any evidence before the governor of the State of Tennessee at the time he issued his demand that your petitioner was personally or constructively within the limits of the State of Tennessee when the crimes are *alleged* to have been committed." In his affidavit traversing the return to the writ he states that he had read the indictments before the governor of the State of New York upon which his warrant of arrest was issued and that those indictments charged him with the commission of the crimes of larceny and false pretenses, specifying the dates named in the indictments. He then states that he was not in the State of Tennessee at any time during the months of March, April, May or June, 1901. He also was sworn upon the hearing and gave oral testimony, in which he reiterates that he was not in the State of Tennessee during the dates mentioned in the indictments, but concedes that he was there on the 2d day of July, 1901. In neither the petition, affidavit or testimony does he swear that he was not in the State when the offenses charged were committed, but has refrained from so testifying.

There are cases in which time is a necessary ingredient of the offense, as for instance the violation of the Sunday laws; but, barring these exceptions, I do not understand that the precise time is a necessary ingredient of crimes, either under our code or the common law. Section 280 of our Code of Criminal Procedure provides that "the precise time at which the crime was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the crime." This provision of the code is a substantial enactment of the common law upon the subject. (2 Hawk. P. C., 2 Ch. 46; 1 Hale P. C. 361; 1 Arch. Crim. Pr. 85; *Com. v. Harrington*, 3 Pick. 26; *People v. Stocking*, 50 Barb. 573;

Regina v. Firth, 11 Cox C. C. 234; *People v. Emerson*, 25 N. Y. S. R. 466; *People v. Jackson*, 111 N. Y. 362–369.)

As we have seen, the last indictment charged the crime as having been committed on the 24th day of June. Time is not a material ingredient of the crimes of larceny or false pretenses; it would, 48 therefore, have been competent upon the trial to show that the offenses charged were actually committed on the 2d day of July, when the relator was in the State, instead of the 24th day of June. The indictments were before the governor; they charged the commission of the crime of larceny. The usual allegation is that he did then and there take, steal and carry away, which imports the presence of the person charged. Under the statute a charge may be established before the governor by the production of a copy of the indictment. It, therefore, furnishes some evidence upon which the governor may act. As we have seen, the relator has neglected to show, either by stipulation or by his own testimony, that he was not actually present at the time the offenses charged were committed. He has confined his testimony to showing that he was not there on the particular dates specified in the indictment. This is not sufficient. It consequently follows that the contention of the relator to the effect that the governor had no power to issue the warrant for his arrest and his return to the State of Tennessee for the reason that he was not personally present in that State when the offense was committed is not raised by the record in these proceedings.

The warrant upon which the relator is detained recites all the facts necessary to give the governor jurisdiction to issue it. It is not contended that it is informal or defective in any particular. It recites that the governor of Tennessee presented papers to the governor of this State, duly authenticated, including copies of the indictments found, charging the relator with having committed the crimes of larceny and false pretenses in that State, and that he "has fled therefrom and taken refuge in the State of New York." This, if true, is sufficient to authorize the governor of this State to issue the warrant for his arrest and return to the State of Tennessee. The papers presented to the governor, upon which he made his determination to issue the warrant, have not been returned or their contents made to appear by the relator, either in his petition or traverse. They, consequently, are not before us, and we are unable to determine whether the conclusion of the governor was proper or without support of evidence.

In the case of *People ex rel. Draper v. Pinkerton* (77 N. Y., 245) the question under consideration appears to have been squarely decided. It is stated in the opinion that "the only material question which seems to be presented in this case is whether a warrant of the governor of this State for the arrest of a fugitive from justice of another State containing the recitals of facts necessary to confer authority under the Constitution and laws of the United States is a sufficient justification for holding the prisoner when up on *habeas corpus*, without producing the papers or evidence upon which the governor acted. *We have no doubt but that the recitals are to be taken as prima*

facie, at least, true, and that the return setting forth the warrant containing such recital is sufficient."

In the case of *People ex rel. Jourdan v. Donohue* (84 N. Y., 49 438) Finch, J., in delivering the opinion of the court, says: "The sufficiency of the executive warrant to justify the detention of the prisoner is the sole question raised by the writ of *habeas corpus*, and presented on this appeal. * * * Where, however, the papers upon which the warrant is founded are not produced, but are withheld by the executive in the exercise of his official discretion and authority, we can look only to the warrant itself and its recitals for the evidence that the essential conditions of its issue have been fulfilled." He then proceeds to state that all the essential requirements of the Constitution and statute are contained in the recitals of the warrant, and concludes by affirming the order dismissing the writ of *habeas corpus*.

In the very recent case of *Terlinden v. Ames* (184 U. S. 270–278) Chief Justice Fuller says: "The settled rule is that the writ of *habeas corpus* cannot perform the office of a writ of error, and that, in extradition proceedings, if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offense charged is within the terms of the treaty of extradition, and the magistrate, in arriving at a decision to hold the accused, has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition, such decision cannot be reviewed on *habeas corpus*. (*Ornelas v. Ruiz*, 161 U. S. 502–508, and cases cited; *Bryant v. United States*, 167 U. S. 104.)" And again, he concludes by saying: "The decisions of the executive department in matters of extradition within its own sphere, and in accordance with the Constitution, are not open to judicial revision; and it results that where proceedings for extradition, regularly and constitutionally taken under the acts of Congress, are pending, they cannot be put an end to by writs of *habeas corpus*." (See, also, *Matter of Clark*, 9 Wend. 212.)

In the case of *Roberts v. Reilly* (116 U. S. 80) we have a case in many respects very similar to the one under consideration. In that case the relator had been indicted in the State of New York for grand larceny. A requisition was made by the governor for his extradition from the State of Georgia. The governor of that State issued his warrant upon which he was arrested and held in custody. *Habeas corpus* was then issued by the district court of the southern district of Georgia. The accused made an affidavit denying his guilt, and also denying that he was in the State of New York on the day laid in the indictment as the date of the offense; but he did not deny that he was in the State at about that date.

Mr. Justice Matthews, in delivering the opinion of the court, says with reference to the claim that the relator was not a fugitive from justice, "that it is a question of fact which the governor of the State, upon whom the demand is made, must decide, upon such evidence as he may deem satisfactory. * * * The determination of the

fact by the executive of the State in issuing his warrant of
50 arrest upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof." The judgment of the circuit court, remanding the prisoner to the custody of the agent of the State of New York, was affirmed. It will be observed that in that case the relator showed that he was not in the State at the date laid in the indictment; but this did not overcome the presumption of fact found by the governor, that he was a fugitive from justice.

Article 4, section 2, subdivision 2 of the Constitution of the United States provides that "a person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

The Revised Statutes of the United States, section 5278, provides that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or of an affidavit made before a magistrate of any State or Territory, charging the person demanded of having committed treason, felony, or other crime, certified as authentic by the governor or chief of police of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause a notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive and to cause him to be delivered to such agent when he shall appear."

It will be observed that under the Constitution and statute, to which we have referred, the application must be made to the "executive authority" of the State or Territory to which the person charged with the crime has fled. The duty, therefore, devolves upon such executive authority to determine all the questions of fact which arise under the Constitution and statute. In this State the executive authority is vested in the governor. When the application was made for the arrest of the relator by the governor of Tennessee it became the duty of the governor of this State to determine: (1) Whether a crime under the laws of Tennessee was charged as having been committed by the relator. (2) Whether he was a fugitive from justice of that State. It appears that the governor has determined these questions from his recitals in the warrant. The first question was established by the production before him of the indictments found duly certified and authenticated, and the second by the indictments and other documents duly certified by the governor of the State of Tennessee to be authentic. Neither the Constitution nor the statutes make

any provision for a review of the determination of the
51 governor, but our own statutes give to every person deprived of his liberty the right to apply for a writ of *habeas corpus*, and in case he is imprisoned by virtue of a warrant of the executive, under a demand for extradition, section 827 of the Code of Criminal Procedure gives him the right to a review for the purpose of determining his identity, whether he is the person charged with crime under the demand for extradition. Under this writ the courts doubtless have the power to determine whether the executive has acted within the powers given him by the Constitution and statutes of the United States. When the papers upon which he has acted have been returned and become a part of the record in the proceedings upon *habeas corpus*, and it appears from such papers that no crime is charged as having been committed in the State demanding the return of the person, it has been held, though not without criticism, that the court may discharge him (*People ex rel. Lawrence v. Brady*, 56 N. Y., 182), but where the papers upon which the governor has acted in making his determination to issue the warrant are not before the court, and the contents of such papers do not appear, the recitals of facts found by him, contained in the warrant, must be taken as true, so far as the review by *habeas corpus* is concerned.

The prevalence of crimes committed in one State by persons actually in another State, through innocent agents employed by them, such as the forwarding of forged drafts, checks and other instruments through the mails, express agencies or otherwise, for the purpose of procuring money or other property thereon, makes it desirable that the question should be determined as to whether, under the Constitution and statute- of the United States, a person found in one State can be surrendered up, to be taken to another State for trial, for a crime committed therein, through some innocent agency of his, when he was only constructively present in the person of his agent. That question, however, ought to be determined by the Supreme Court of the United States. The conclusions reached upon the points above discussed render it unnecessary for this court to determine it in this case.

The order appealed from should be affirmed.

Parker, Ch. J., Gray and Vann, JJ., concur with Cullen and O'Brien, JJ.; Werner, J., concurs with Haight, J.

Ordered accordingly.

52 Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Appellant,
vs.
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Respondent.

To the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York:

And now comes James L. Hyatt, chief of police of the city of Albany, N. Y., by Scherer & Downs, his attorneys, and complains that in the record and proceedings and also in the rendition of a judgment — a plea in the suit between the People of the State of New York on the relation of Charles E. Corkran, relator, and James L. Hyatt, as chief of police of the city of Albany, N. Y., defendant, which is in the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, and the said court of appeals having rendered a decision reversing said judgment theretofore rendered in
53 the said supreme court of the State of New York on the 23d day of May, 1902, affirming the judgment of the special term of the said supreme court rendered on the 19th day of March, 1902, in favor of the said defendant, and dismissing the writ of *habeas corpus* prayed for by the relator herein and remanding the said Charles E. Corkran to the custody of the said defendant, James L. Hyatt, as chief of police of the city of Albany, N. Y., and which said decision of the said court of appeals allowed the said writ and discharged the said Charles E. Corkran from the custody of the said James L. Hyatt, as chief of police of the city of Albany, N. Y., and wherein was drawn in question the validity of the statute and of an authority exercised under the United States, and the decision is against their validity, and wherein a right was claimed under the Constitution, and also under the statutes of the United States, and the decision is against the right specially set up and claimed, all of which appears in the record and proceedings in said suit, manifest error has happened to the great damage of the said James L. Hyatt, as chief of police of the city of Albany, N. Y.

Wherefore, the said James L. Hyatt, as chief of police of the city of Albany, N. Y., by his attorneys aforesaid, prays for an allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

SCHERER & DOWNS,
Attorneys for James L. Hyatt, as Chief of Police of the City of Albany, N. Y.

Office and post-office address, No. 13 N. Pearl St., Albany, N. Y.

54 [Endorsed:] Court of appeals The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y.,

respondent. Petition. Scherer & Downs, attorneys for respondent, office and post-office address, No. 13 North Pearl St., Albany, N. Y. Rec'd Oct. 9, 1902 Alton B. Parker Ch. J.

55 Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Appellant,

vs.

JAMES L. HYATT, Chief of Police of the City of Albany, N. Y., Respondent.

In this cause application having been made to the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York, that being the highest court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and the rules of practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of the said cause to the Supreme Court of the United States,

It is hereby ordered, that the said writ of error be, and the same is hereby, allowed, and the same may be issued by any officers authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars with the Fidelity
56 and Deposit Company of Maryland, as surety thereon.

Dated October 9, 1902.

ALTON B. PARKER, *Ch. J.*

57 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Order for writ of error. Scherer & Downs, attorneys for respondent, Office and post-office address, No. 13 North Pearl St., Albany, N. Y.

58 UNITED STATES OF AMERICA, *ss:*

[Seal of the U. S. Circuit Court, Northern District, N. Y.]

The President of the United States of America to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York on the relation of Charles E. Corkran, relator, and James L. Hyatt, as chief of police of the city of Albany, N. Y., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute or of an authority exercised under said State, on the ground of their being repugnant to the Constitution

treaties or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the
59 great damage of the said James L. Hyatt, as chief of police of the city of Albany, N.Y., as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of October, in the year of our Lord one thousand nine hundred and two.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court, North. District of New York.
By C. W. HIGGISON, *Deputy.*

Allowed by—
ALTON B. PARKER,
Chief Judge of the Court of Appeals of the State of New York.

60 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Writ of error. Scherer & Downs, attorneys for respondent, office and post-office address, No. 13 North Pearl St., Albany, N. Y.

61 In the Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Charles E. Corkran, Relator,
against
JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., Defendant, Respondent.

The defendant assigns the following errors in the final decision of this court filed herein upon October 7, 1902:

I. The court erred in holding and deciding that the relator was

entitled to a writ of *habeas corpus*, and the relief prayed for in his petition and in discharging the relator; and in reversing the order of the supreme court dismissing the said writ of *habeas corpus* and remanding the relator to the custody of the defendant.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the relator and dismissing the writ of *habeas corpus*, be affirmed in all things and that the said relator be remanded to the custody of the defendant.

III. The court erred in deciding that the relator should not be remanded to the custody of the defendant for the purpose of being sent back to the State of Tennessee, as required by the pro-
62 visions of the Constitution of the United States, article 4, § 2, subd. 2, and in deciding that the relator was not a fugitive from justice within the intent and meaning of that provision of the Constitution of the United States.

IV. The court erred in deciding that the relator was entitled to a writ of *habeas corpus* and to his discharge on the ground that he was not a fugitive from justice, in that it was a denial of the right of interstate rendition and a decision against the validity of the authority and power under the Constitution of the United States and under § 5278 of the Revised Statutes of the United States, being chapter 7 of the laws of Congress passed February 12, 1793.

V. The court erred in assuming to review the decision of the governor of the State of New York on *habeas corpus* after the relator had been heard before the governor of the State of New York, and the governor of the State of New York had issued his warrant for the return of the said Charles E. Corkran to the State of Tennessee, and in denying the right of the governor under the Constitution of the United States and the laws of Congress to return the said Charles E. Corkran to the State of Tennessee.

VI. The court erred in deciding that the relator was not a fugitive from justice within the meaning of the Constitution of the United States, article 4, § 2, subd. 2, and within the meaning of the laws of Congress, chapter 7, passed February 12, 1793, and § 5278 of the Revised Statutes of the United States.

63 VII. The court erred in deciding against the validity of the authority exercised by the governor of the State of New York under the laws of Congress, and the authority of the United States and the Constitution in directing the return of the said Charles E. Corkran to the State of Tennessee.

VIII. The court erred in deciding in favor of the validity of the statutes of the State of New York and of the authority exercised under the said statutes and decisions of said court allowing a writ of *habeas corpus* in a case of this kind and in granting the said writ of *habeas corpus* and in discharging the relator, the said statutes being the Laws of 1876, chapter 448 and the Laws of 1880, chapter 178, sections 2015 to 2066, inclusive, as amended.

IX. The court erred in granting the writ of *habeas corpus* herein and ordering the discharge of the relator on the ground that he was not a fugitive from justice within the meaning of the Constitution of the United States and laws of Congress, and in not dismissing

the said writ and remanding the said Charles E. Corkran to the custody of the defendant to be returned to the State of Tennessee in accordance with the directions of the warrant of the governor of the State of New York, and in assuming to review the decision of the governor of the State of New York and deciding against the validity of the Constitution and authority of the United
64 States under which the governor of the State of New York acted.

SCHERER & DOWNS,
Attorneys for Defendant.

Office and post-office address, No. 13 N. Pearl St., Albany, N. Y.

65 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Assignment of errors. Scherer & Downs, attorneys for respondent. Office and post-office address, No. 13 North Pearl St., Albany, N. Y.

66 STATE OF MARYLAND, } ss:
City of Baltimore, }

Albert S. Gill, being duly sworn, deposes and says that he is over the age of twenty-one years. That on the 18th day of October, in the year of our Lord one thousand nine hundred and two, he personally served at the city of Baltimore, Maryland, the within citation on Charles E. Corkran, by delivering to and leaving with the said Charles E. Corkran in person a true copy of the same. Deponent further says that at the time of making such service he also served upon the said Charles E. Corkran a copy of the bond filed in the above case. Deponent further says that he knew the person so served as aforesaid to be the same person mentioned and described in the said citation.

ALBERT S. GILL.

Subscribed and sworn to before me this 21 day of October, 1902.

[Seal of Thomas Kell Bradford, Notary Public, Baltimore, Md.]

THOS. KELL BRADFORD,
Notary Public.

67 UNITED STATES OF AMERICA, ss:

To the People of the State of New York on the relation of Charles E. Corkran, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the New York court of appeals, in a suit wherein the People of the State of New York on the relation of Charles E. Corkran is defendant in error, and James L. Hyatt, as chief of police of the city

of Albany, N. Y., is plaintiff in error, to show cause, if any there be, why the judgment rendered against the said James L. Hyatt, as chief of police of the city of Albany, N. Y., plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alton B. Parker, chief justice of the court of appeals of New York, this 9th day of October, in the year of our Lord one thousand nine hundred and two.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of New York.

68 [Endorsed:] Court of appeals. The People of the State of New York on the relation of Charles E. Corkran, appellant, against James L. Hyatt, as chief of police of the city of Albany, N. Y., respondent. Original citation. Scherer & Downs, attorneys for respondent, office and post-office address, No. 13 North Pearl St., Albany, N. Y. Due and personal service of a copy of the within citation is hereby admitted this 18 day of Oct., 1902. Charles E. Corkran. Moot, Sprague, Brownell & Marcy, attorneys for plaintiff.

69 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the State of New York, do hereby certify that the foregoing papers, composed of a copy of the return on appeal to the court of appeals in the case of The People *ex rel.* Charles E. Corkran against James L. Hyatt, as chief of police of the city of Albany, plaintiff in error, and of the whole thereof upon which the said court acted in rendering judgment therein; the judgment of the said court rendered thereon, and the opinion therein delivered on the decision thereof, are true and correct copies of the originals remaining on file and of record in this office, and that the petition for the writ of error; order for the writ of error and fixing amount of surety; the writ of error; assignment of errors and the citation to the Supreme Court of the United States, and affidavit showing service thereof, are the originals thereof, and that the whole thereof constitute the return to the writ of error herein.

In witness whereof, I have hereunto set my hand and affixed my official seal at the city of Albany this twenty-seventh day of October, A. D. one thousand nine hundred and two.

Seal Court of Appeals, State of New York.

W. H. SHANKLAND, *Clerk.*

Endorsed on cover: File No. 18,720. New York court of appeals. Term No. 492. James L. Hyatt, as chief of police of the city of Albany, N. Y., plaintiff in error, *vs.* The People of the State of New York on the relation of Charles E. Corkran. Filed October 30, 1902.

IN THE SUPREME COURT OF THE UNITED STATES.

JAMES L. HYATT, AS CHIEF OF POLICE OF THE CITY OF ALBANY,
Plaintiff-in-Error,

against

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF CHARLES E. CORKRAN, Defendant-in-Error.

Take notice that upon the affidavit of J. Murray Downs and James L. Hyatt, hereto annexed, and all the pleadings and proceedings herein, an application will be made at a term of the Supreme Court of the United States, appointed to be held at the Capitol in the city of Washington, D. C., on the 17th day of November, 1902, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order to advance the above-entitled cause upon the docket that the same may be more speedily argued and decided.

Yours, etc.,

EDWIN COUNTRYMAN,
Attorney for Plaintiff-in-Error; Office and post-office address, No. 13 North Pearl street, Albany, N. Y.

Dated October 27, 1902.

To Messrs. Moot, Sprague, Brownell & Marcy, Attorneys for Defendant-in-Error.

IN THE SUPREME COURT OF THE UNITED STATES.

JAMES L. HYATT, AS CHIEF OF POLICE OF THE CITY OF ALBANY,
Plaintiff-in-Error,

against

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF CHARLES E. CORKRAN, Defendant-in-Error.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
City and County of Albany, } *ss.*:

J. Murray Downs, being duly sworn, deposes and says that he is an attorney-at-law, residing in the city of Albany, N. Y., and a member of the law firm of Scherer & Downs, the attorneys for James L. Hyatt, the plaintiff-in-error, in the courts of the state of New York.

That the above-entitled appeal is brought on by a writ of error to the court of appeals of the state of New York, for the purpose of reviewing a decision of that court, which reversed the order of the supreme court dismissing the writ of *habeas corpus* and remanding the relator to the custody of the said James L. Hyatt, chief of police of the city of Albany, and which decision of the court of appeals directed that the said writ of *habeas corpus* was well brought and that the said Charles E. Corkran, defendant-in-error, should be discharged from custody.

Charles E. Corkran was indicted in the state of Tennessee for the crime of grand larceny and three indictments were found against him in the state of Tennessee on the 26th day of February, 1902. The Governor of the state of Tennessee made requisition on the Governor of the state of New York for the return to the state of Tennessee of the said Charles E. Corkran, to the end that he might be tried for the crimes charged in the said indictments. After a hearing before the Governor of the state of New York, at which hearing said Charles E. Corkran was duly represented by counsel, and the agent for the state of Tennessee by Messrs. Scherer & Downs, the Governor of the state of New York issued under his hand and the privy seal of the state, a

warrant to James L. Hyatt, as chief of police of the city of Albany, directing the said James L. Hyatt to arrest the said Charles E. Corkran, and after compliance with the requirements of section 827 of the code of criminal procedure of the state of New York to deliver the said Charles E. Corkran to the custody of Vernon Sharpe, agent for the state of Tennessee, to be taken back to the state of Tennessee from which he fled. The said Charles E. Corkran was taken into the custody of the said James L. Hyatt, as chief of police of the city of Albany, whereupon the said Charles E. Corkran immediately sued out a writ of *habeas corpus* requiring the said James L. Hyatt, as chief of police of the city of Albany, to have the body of the said Charles E. Corkran, together with the cause of his detention and imprisonment before the Hon. D. Cady Herrick, a justice of the supreme court of the state of New York.

Pursuant to the command of the said writ the said James L. Hyatt produced the said Charles E. Corkran before the supreme court and made a return to the said writ, alleging that he held the said Charles E. Corkran pursuant to the command of the warrant issued by the Governor of the state of New York for the return of the said Charles E. Corkran to the state of Tennessee. That return was traversed and a hearing had which resulted in an order being duly made at a special term of the supreme court of the state of New York, held at the city hall in the city of Albany, N. Y., on the 19th day of March, 1902, dismissing the said writ of *habeas corpus* and directing that the said Charles E. Corkran be remanded to the custody of the said James L. Hyatt, as chief of police of the city of Albany, and an order was also made at the same time and on the same day, staying all proceedings on the said order until the hearing and determination of an appeal, which was thereupon taken by the said Charles E. Corkran to the appellate division of the supreme court of the state of New York. The said appeal was taken by the said Charles E. Corkran to the appellate division of the supreme court, and the said Charles E. Corkran was admitted to bail, pending said appeal.

The said appeal came on for hearing at the appellate division of the supreme court of the state of New York, and an order was duly made on or about the 23d day of May, 1902, affirming the order of the special term in all things. Thereupon, the said Charles E. Corkran duly appealed to the court of appeals of the state of New York, and was admitted to bail, pending said appeal. The said appeal came on for hearing in the court of appeals at

the June, 1902, term of the court. After hearing the said appeal, the court of appeals on or about the 7th day of October, 1902, duly made an order reversing the decision of the appellate division of the supreme court and of the special term of the supreme court, and directing that the said Charles E. Corkran be discharged from custody.

Whereupon, the said James L. Hyatt, as chief of police of the city of Albany, sued out a writ of error from the supreme court of the United States to the court of appeals of the state of New York, praying for a review of the decision of the court of appeals. Assignments of error were duly filed, and the Court of Appeals, pursuant to the directions of the said writ of error, through its clerk, has caused the said case to be returned to this court and the said record on file in the court of appeals of the state of New York has been returned to and is filed in the office of the clerk of this court, together with the writ of error, citation, bond, assignments of error and appearance for the plaintiff-in-error by Edwin Countryman, whose office and post-office address is No. 13 North Pearl street, Albany, N. Y.

That this case presents for construction in this court, the provision of the constitution of the United States, article 4, section 2, subdivision 2, which provides: "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." And also the provision of section 5278, of the Revised Statutes of the United States, which provides as follows:

"Section 1. That whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produce a copy of an indictment found, of an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from

the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory."

That it is very important and material that this case should be advanced on the calendar and that a speedy hearing or determination of the matters be had for the reason that the proceeding is one for interstate rendition, and if it should be decided that the said Charles E. Corkran is to be returned to the state of Tennessee, it is important for the interest of justice that he should be surrendered immediately. That under the contention of the plaintiff-in-error, the said Charles E. Corkran is a fugitive from justice and should be returned to the state of Tennessee for trial and that a speedy determination of this matter should be had.

Wherefore, the said plaintiff-in-error prays that an order be made advancing the above-entitled cause on the docket and fixing an early date for the argument of this case in this court and the said plaintiff-in-error ever will pray.

J. MURRAY DOWNS.

Sworn to before me this 27th
day of October, 1902.

ELLIS J. STALEY,
Notary Public, Albany Co., N. Y.

IN THE SUPREME COURT OF THE UNITED STATES.

JAMES L. HYATT, AS CHIEF OF POLICE OF THE CITY OF ALBANY,
Plaintiff-in-Error,

against

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF CHARLES E. CORKRAN, Defendant-in-Error.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
City and County of Albany, } *ss.:*

James L. Hyatt, being duly sworn, deposes and says that he is the plaintiff-in-error in the above-entitled appeal; that he is chief

of police of the city of Albany, N. Y., and that the said Charles E. Corkran was taken into custody by your deponent pursuant to the direction of a warrant issued by the Governor of the state of New York, and which said warrant directed your deponent after complying with the requirements of section 827 of the code of criminal procedure of the state of New York, to deliver the said Charles E. Corkran to the custody of Vernon Sharpe, agent of the state of Tennessee, to be taken back to the state of Tennessee from which state the said Charles E. Corkran fled.

That your deponent has read the affidavit of J. Murray Downs and the same is true in all particulars. That the said Charles E. Corkran remained in the custody of your deponent until admitted to bail, and your deponent has not been able up to the present time to comply with the provisions of the warrant directed to him by the governor of the state of New York.

Your deponent believes that a speedy determination of this matter should be had for the reason that it involves an important question with relation to the administration of the criminal laws of the different states of the United States. That the said Charles E. Corkran is admitted to bail and his return to the state of Tennessee is sought because of the criminal charge made against him, and the interests of justice demand that he should be returned to the state of Tennessee as speedily as possible that he may be tried for the crime charged against him.

Wherefore, your deponent prays that an order be made by this court setting this case down for argument on as early a day as possible to the end that the same may be speedily argued and decided.

JAMES L. HYATT.

Sworn to before me this 29th
day of October, 1902.

ELLIS J. STALEY,
Notary Public, Albany Co., N. Y.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JAMES L. HYATT, as Chief of Police of the City of Albany, N. Y., plaintiff in error,

AGAINST

THE PEOPLE OF THE STATE OF NEW YORK, on the Relation of CHARLES E. CORKRAN, defendant in error.

No. 49[illegible].
October Term, 1902.

BRIEF FOR PLAINTIFF-IN-ERROR.

In the latter part of February, 1902, the governor of the state of Tennessee made requisition upon the governor of the state of New York for the return to the state of Tennessee of one Charles E. Corkran, charged with the crime of larceny and false pretenses. Two hearings were had before the governor of the state of New York, at each of which Charles E. Corkran appeared and was represented by counsel. After the hearings were had the governor issued a warrant to the chief of police of the city of Albany, N. Y., remanding the said Charles E. Corkran to the custody of the said chief of police of the city of Albany, N. Y., directing that, after complying with the provisions of section 827 of the code of criminal procedure of the state of New York, he deliver the said Charles E. Corkran to one Vernon Sharp, the agent for the state of Tennessee. While the said Charles E. Corkran was in the custody of the chief of police of the city of Albany, N. Y., he, on or about the 13th day of March, 1902, sued out a writ of *habeas corpus* returnable before the supreme court of the state of New York. (Page 2.) To that writ the plaintiff-in-error made return, to which was attached the warrant of the governor. (Pages 4 and 5.) The return was traversed (page 6) and after summary hearing, (pages 7, 8 and 9) an order was made at a special term of the supreme court on the 19th day of March, 1902, dismissing the writ and

remanding the defendant-in-error to the custody of the plaintiff-in-error. The opinion of the court dismissing the writ is found at pages 10 and 11 of the record. Corkran appealed to the appellate division of the supreme court and after a hearing in the appellate division the order of the special term was unanimously affirmed. (Page 14.) From that order an appeal was taken to the court of appeals; a hearing was had there which resulted in an order reversing the order of the supreme court and directing that the said Charles E. Corkran be discharged from the custody of the plaintiff-in-error. (Page 17.) The opinion of the court of appeals is found at pages 18 to 38 of the record. The plaintiff-in-error thereupon sued out this writ of error to review the decision of the court of appeals. (Pages 39 to 41.)

Statement.

Charles E. Corkran was indicted in the state of Tennessee for the crime of grand larceny and false pretenses and three indictments were attached to the requisition papers sent to the governor of the state of New York. He demanded a hearing before the governor, which was accorded him, and two days were spent in a hearing, at each of which times he was represented by counsel. Affidavits and other papers were submitted by both sides, and as a result of the hearing the governor of the state of New York decided to surrender the said Charles E. Corkran to the state of Tennessee for trial and punisl.ment, and the governor, in the manner required by section 827 of the code of criminal procedure, issued a warrant directed to the chief of police of the city of Albany, N. Y., the plaintiff-in-error herein, committing the said Charles E. Cockran to the custody of the plaintiff-in-error. No other papers were returned by the governor, it being the invariable practice of the executive of the state to refuse to return any papers other than the warrant.

While Corkran was in the custody of the chief of police he obtained this writ of *habeas corpus* to test the validity of the warrant and to inquire as to the cause of his imprisonment. He at no time was out of the custody of the chief of police for the reason that at the same time the order was made dismissing the writ a stay was granted to enable him to give bail pending the appeal (page 11), and when the appellate division made its decision affirm-

ing the order of the special term a stay was also granted. (Pages 14 and 15.) The defendant-in-error, then, never was out of the custody of the chief of police and never was delivered to the custody either of the state of Tennessee or the agent for the state of Tennessee.

The claim made by the defendant-in-error in the supreme court and the court of appeals was the same as made by him before the governor, and that is, that he was not personally present in the state of Tennessee at the times the offenses are charged to have been committed, and that, as he was not actually present in the state at the exact times the crimes were committed, he is not a fugitive from justice and should not be surrendered to the state of Tennessee. The court at special term, as will appear by the opinion of Mr. Justice Herrick (pages 10 and 11) held that the case was within the intent of the constitutional provision, and that the defendant-in-error should be extradited. The appellate division wrote no opinion. The court of appeals, as appears by its opinion (pages 18, *et seq.*) sustained the contention of the defendant-in-error and held that, as he was not personally present within the state of Tennessee at the exact times the crimes were committed, he could not be surrendered to the state of Tennessee, for the reason that he was not fugitive from justice within the meaning of the constitution of the United States and the acts of congress.

The plaintiff-in-error contends that Charles E. Corkran is a fugitive from justice. That it is immaterial whether or not he was personally present within the state of Tennessee at the time the crime was committed and that he should be surrendered for trial and punishment.

The indictments were found February 26, 1902. The crimes were charged to have been committed May 1, 1901, May 8, 1901 and June 24, 1901. Cockran was in the State of Tennessee July 2nd, 1901 (See pages 7, 8, and 9).

Assignment of Errors.

I. The court erred in holding and deciding that the relator was entitled to a writ of *habeas corpus*, and the relief prayed for in his petition and in discharging the relator, and in reversing the order of the supreme court dismissing the said writ of *habeas corpus* and remanding the relator to the custody of the defendant.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the relator and dismissing the writ of *habeas corpus* be affirmed in all things, and that the said relator be remanded to the custody of the defendant.

III. The court erred in deciding that the relator should not be remanded to the custody of the defendant for the purpose of being sent back to the state of Tennessee, as required by the provisions of the constitution of the United States (article 4, section 2, subdivision 2), and in deciding that the relator was not a fugitive from justice within the intent and meaning of that provision of the constitution of the United States.

IV. The court erred in deciding that the relator was entitled to a writ of *habeas corpus* and to his discharge on the ground that he was not a fugitive from justice, in that it was a denial of the right of interstate rendition and a decision against the validity of the authority and power under the constitution of the United States and under section 5278 of the revised statutes of the United States, being chapter 7 of the laws of congress, passed February 12, 1793.

V. The court erred in assuming to review the decision of the governor of the state of New York on *habeas corpus* after the relator had been heard before the governor of the state of New York, and the governor of the state of New York had issued his warrant for the return of the said Charles E. Corkran to the state of Tennessee, and in denying the right of the governor under the constitution of the United States and the laws of congress to return the said Charles E. Corkran to the state of Tennessee.

VI. The court erred in deciding that the relator was not a fugitive from justice within the meaning of the constitution of the United States (art. 4, sec. 2, subd. 2) and within the meaning of the laws of congress (chap. 7), passed February 12, 1793, and section 5278 of the revised statutes of the United States.

VII. The court erred in deciding against the validity of the authority exercised by the governor of the state of New York under the laws of congress and the authority of the United States and the

constitution in directing the return of the said Charles E. Corkran to the state of Tennessee.

VIII. The court erred in deciding in favor of the validity of the statutes of the state of New York and of the authority exercised under the said statutes and decisions of said court allowing a writ of *habeas corpus* in a case of this kind, and in granting the said writ of *habeas corpus*, and in discharging the relator, the said statutes being the laws of 1876 (chap. 448), and the laws of 1880 (chap. 178, secs. 2015 and 2066, inclusive, as amended).

IX. The court erred in granting the writ of *habeas corpus* herein and ordering the discharge of the relator, on the ground that he was not a fugitive from justice within the meaning of the constitution of the United States and the laws of congress, and in not dismissing the said writ and remanding the said Charles E. Corkran to the custody of the defendant, to be returned to the state of Tennessee in accordance with the directions of the warrant of the governor of the state of New York, and deciding against the validity of the constitution and authority of the United States under which the governor of the state of New York acted.

Requisition papers sufficient.

There is no claim here that the papers are defective in any respect; the warrant of the governor is conclusive as to every fact stated in this case, because there is no denial of any of the facts stated in it. The courts of the United States (Ex parte Dawson, 83 Fed., 307-308), the courts of the state of New York (People v. Donohue, 84 N. Y., 438), have held that the warrant of the governor, in the absence of any other evidence, is conclusive and final upon the courts. There is no denial in this record anywhere, either in the petition filed by Corkran or in his testimony, that he is not guilty of the crime as charged. There is no claim that he was not regularly and properly indicted by a grand jury of the state of Tennessee for the crime of grand larceny. There is no claim that the requisition papers forwarded by the governor of the state of Tennessee to the governor of the state of New York were not proper and sufficient in every particular. The sole defense is based upon this alleged claim, that, as there was no proof that Corkran

was in the state of Tennessee at the times the crimes were committed, and that, as the proof was that he was without the state of Tennessee at the times charged in the indictments, he cannot be sent back for trial and punishment. Every material fact stated in the warrant for extradition is admitted, except this one, or at least, is not denied, and the court must assume that this man was lawfully indicted upon competent evidence, since the court cannot presume that the indictment is fictitious or procured by fraud. The indictments were properly authenticated; they were supported by the certificate of the attorney-general of the state of Tennessee, that the indictments were properly found and the charge made in good faith, and it was not found for the purpose of collecting a debt, and the papers were properly authenticated under the seal of the state of Tennessee, and no objection has been made to them. Hence there can be no discussion here as to the guilt or innocence of Corkran, nor of the sufficiency of the indictments and requisition papers. The whole issue is narrowed down to this one question, and for the reasons submitted herein it is immaterial where he was when the crime was committed.

The constitution and laws of congress provide for inter-state rendition of fugitives, even in cases where the party charged was not actually present in the demanding state at the time the crime was committed.

The constitution of the United States (article 4, section 2, subdivision 2) provides as follows: "A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled be delivered up to be removed to the state having jurisdiction of the crime." The revised statutes of the United States (sec. 5278, being laws of congress, 1793, chap. 7), provide as follows: "Section 1. That whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produce a copy of an indictment found, or an affidavit made before a magistrate of any state or

territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitives to the state or territory making such demand, shall be paid by such state or territory."

It appears in Madison's notes of the convention debates (Elliott's Debates [Lippincott Edition, 1881], vol. 5, pages 381, 487), that when this provision of the constitution came before the convention the following proceedings were had, on the 6th day of August, 1787: "Committee on detail rendered a report which contained the following clause:

"'Article XV. Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offense."'

On the 28th day of August, 1787, the convention took up for consideration article XV, and the following proceedings were had:

"Article XV being thus taken up, the words 'high misdemeanor' were struck out and the words 'other crime' inserted in order to comprehend all proper cases, it being doubtful whether 'high misdemeanor' had not a technical meaning too limited."

Thus, at the outset and in the convention it was the evident design of the framers of the constitution to make this provision broad enough to include every possible crime committed within the borders of the United States, and that no state should be an asylum for fugitives committing crimes in other states.

By virtue of the power thus conferred by the constitution congress, in the year 1793, passed an act known as chapter 7, above

quoted as section 5278 of the revised statutes, and that act was entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters."

The decision of the Court of Appeals.

The decision of the court of appeals was based upon the doctrine that a person was not a fugitive from justice and should not be surrendered upon demand, unless he was physically present in the demanding state at the exact time the crime was committed. The court followed the decisions of certain other courts and text writers, referred to in the opinion of Judge Cullen. Those decisions limit the constitutional provision to the smallest possible effect. The effect of the decision is this: If a man leaves New York city and crosses by ferry to Jersey City and while there steals the smallest trifle and then returns to New York city, he is a fugitive from justice and shall be surrendered on demand. If the same man, instead of using the ferry, uses the telephone and by fraud steals any amount of property from a resident of Jersey City, he is not a fugitive from justice and cannot be surrendered to New Jersey for trial and punishment; or,

If a man crosses from New York city to Jersey City and commits a simple assault, he must be returned to New Jersey as a fugitive criminal.

If the same man uses the mail or express and sends a poisoned preparation to a citizen of New Jersey and thereby commits a murder in New Jersey, he is not a fugitive criminal and shall not be surrendered to New Jersey for trial and punishment.

And these examples might be multiplied, since murder, assault, arson, larceny, forgery, perjury and any crime not requiring direct personal contact may be committed by use of the mails, express, telegraph, telephone or innocent messenger, or by one standing near the boundary line, in another state, although the perpetrator never crosses the line into the state wherein the crime is consummated or committed.

If the decision is correct, then the insufficiency of the constitution must be confessed, in this instance, and amendment resorted to.

The decision of the court below and the argument of the defendant-in-error is based upon a narrow construction of the preposition

"from" in the constitution. The court construes the meaning of that word inclusively, thereby working out a strict construction of the provision, contrary not only to the general policy of the law, but to the ordinary rules of construction. In the case of Griffith v. Bogert (18 How., 163), was laid down the rule of construction as follows: "The intention and policy of the enactment should be sought for and carried out. Courts should never indulge in nice grammatical criticism of prepositions or conjunctions, in order to destroy rights honestly acquired." The court should not indulge in a fine grammatical criticism of the preposition "from" in the constitution in order to defeat the manifest intention of the provision and bring about a condition which would make the states asylums for fugitive criminals of other states. There is no reason why the word "from" should be construed inclusively and held to mean that the fugitive must depart from a point within the territorial limits of the state. The better way would be to give it a meaning, both inclusive and exclusive, so that one should be deemed as fleeing from the state, whether he fled from a point within its borders or whether he fled from its demand for surrender from a point without its boundaries, or whether he fled from a point on its borders from its demand for his surrender. The word "flee" does not necessarily imply action. A person flees justice, or a temptation, or a pestilence when he avoids it. He flees from justice when he avoids the demands of justice and does everything within his power to prevent the state obtaining jurisdiction of his person, and that is the ordinary meaning of the phrase "fugitive from justice." It does not mean a man who commits a crime and runs away, only, but includes those who commit crimes and who avoid detection or punishment after detection. A man might commit a crime undetected and then conceal himself effectually but a short distance from the scene of the crime and he is none the less a fugitive from justice.

"Such is the character of human language that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended." (McCullough v. Maryland, 4 Wheat., 414.)

"The word 'from,' with respect to both time and space, has been the subject of judicial construction in a very large number of cases. The principal question which has arisen is whether the term is to be held inclusive or exclusive of the *terminus a quo*, as applied either to time or distance, and attempts have been made to formulate general rules by which this can be determined. Thus it has been said that in its grammatical sense, when referring to a certain point as a *terminus a quo* the word 'from' always excludes that point. Again, it has been argued that while the term 'from' a day, when used to pass an interest, includes the day of date, the rule is otherwise when the term is used merely to fix a terminus from which to compute time. And by other authorities the rule has been laid down thus: Where time is computed from an act done, the general rule is to include the day; but where it is computed from a day, the day is excluded." (Am. and Eng. Ency. of Law, vol. 14, page 553.)

In construing the provision of the United States revised statutes (sec. 1045) that "nothing in the two preceding sections shall extend to any person fleeing from justice" (which provision excluded from the terms of the statute of limitation the time spent by a fugitive without the jurisdiction), this court said: "In order to constitute a fleeing from justice it is not necessary that the course of justice should have been put in operation by the presentment of an indictment by a grand jury, or by the filing of an information by the attorney for the government or by the making of a complaint before a magistrate. It is sufficient that there is a flight, with the intention of avoiding being prosecuted, whether a prosecution has or has not been actually begun." * * *

From these considerations our conclusion is that, in order to constitute "fleeing from justice" within the meaning of section 1045 of the revised statutes, it is not necessary that there should be an intent to avoid the justice of the United States; but it is sufficient that there is an intent to avoid the justice of the state having criminal jurisdiction over the same territory and the same act." (Streep v. United States, 160 U. S., 128.) It is, then, the intent to avoid justice that makes one a fugitive from justice, and it is immaterial whether the crime has been detected, or not or a complaint made before a magistrate, or an indictment found, nor

what the secret intent of the culprit may be; he becomes a fugitive from justice when he avoids the demands of justice. And he flees "from" the justice of the state when he avoids the justice of the state.

A case similar to the case at bar is that of Roberts v. Reilly (116 U. S., 80). Roberts was indicted in the state of New York for the crime of grand larceny. He was arrested in Georgia. An application was made by the governor of the state of New York to the governor of the state of Georgia for the extradition of Roberts. Roberts filed an affidavit (see 116 U. S., page 87) denying that he was in the state of New York on the day laid in the indictment as the date of the offense, and denied that he was in the state of New York after the indictment was found, or that he fled therefrom, and his affidavit was corroborated by the affidavit of a third party filed in the proceeding. An application was made in the United States district court for the southern district of Georgia for the discharge of Roberts, on the ground that he was not a fugitive from justice from the state of New York, and the writ was dismissed and Roberts remanded for extradition. An appeal was taken to the United States supreme court, and it was held that Roberts was a fugitive from justice within the meaning of the constitution and the act of congress.

"The appellant in his affidavit does not deny that he was in the state of New York about the date of the day laid in the indictment when the offense is alleged to have been committed, and states, by way of inference only, that he was not in that state on that very day; and the fact that he has not been within the state since the finding of the indictment is irrelevant and immaterial. To be a fugitive from justice, in the sense of the act of congress regulating the subject under consideration, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a state committed that, which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another." (Roberts v. Reilly, 116 U. S., 80, at page 97.)

Charles E. Cook opened a bank in Juneau, in the state of Wisconsin, and entered upon a general banking business; although the bank was insolvent, it was kept open and deposits received. Cook was indicted for receiving the deposits, with the intent to cheat and defraud. The governor of the state of Wisconsin made requisition of the governor of the state of Illinois and Cook was arrested in the state of Illinois and taken to the state of Wisconsin. He sued out a writ of *habeas corpus* praying for his discharge, on the ground that he was not a fugitive from justice and should not be held. Cook was not in Juneau, in the state of Wisconsin, at the time the deposits were received, the acceptance of which he was indicted for, and he sought his discharge on that ground that not having been within the state at the time the deposits were received and the crime committed, he was not extraditable. The court held that even though not within the state at the time of the commission of the offense, he had committed a crime against the laws of the state of Wisconsin, having been found within the state of Illinois, he was properly held as a fugitive from justice, and the court followed the decision of Roberts v. Reilly. (In re Cook, Fed Rep., 833; 146 U. S., 183.)

In Regina v. Jacobia (46 Law Times [New Series], 595), it appeared that Jacobia and Hiller, residing in Holland, by means of false pretenses, induced a merchant residing in Germany to send them certain household furniture which they procured in Holland and had reshipped to England, whence both fled. Germany made a demand on Great Britain for the return of Jacobia and Hiller as fugitives from justice. It was held that even though Jacobia and Hiller had never been within the borders of the Empire of Germany, they had committed crime therein and were fugitives from justice, and the court dismissed their application for a writ of *habeas corpus* and remanded them for extradition.

Reason for a broad construction.

In Kentucky v. Dennison (24 How., 66) the governor of the state of Kentucky made requisition upon the governor of the state of Ohio for the return of a fugitive who was indicted for the crime of assisting a slave to escape. The governor of Ohio referred the matter to his attorney-general, and, upon his opinion, refused

to surrender the fugitive, and one of the grounds upon which he placed his decision was that the phrase "other crime" in the constitution meant only such crimes as were known to the common law, and not all such acts as might be defined as criminal by the different states. The governor of the state of Ohio, having refused to extradite the fugitive, the state of Kentucky made a motion in the United States supreme court for an order requiring the governor of the state of Ohio to show cause why a writ of *mandamus* should not issue commanding him to surrender the fugitive.

"For this was not a compact of peace and comity between separate nations who had no claim on each other for mutual support, but a compact binding them to give aid and assistance to each other in executing their laws, and to support each other in preserving order and law within its confines, whenever such aid was needed and required; for it is manifest that the statesmen who framed the constitution were fully sensible, that from the complex character of the government, it must fail, unless the states mutually supported each other and the general government; and that nothing would be more likely to disturb its peace and end in discord than permitting an offender against the laws of a state, by passing over a mathematical line which divides it from another, to defy its process, and stand ready, under the protection of the state, to repeat the offense as soon as another opportunity offered" (at page 100).

In that case a broad and comprehensive construction following the intent and purpose of the constitution was declared, and the policy of surrendering all fugitives from justice, no matter what might be the character of the crime, nor where nor how it was committed, was indicated.

It was one of the necessities of the occasion that the constitution should be drafted in general language. "The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be perilous and difficult, if not an impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in

the inscrutable purposes of Providence." (Martin v. Hunter, 1 Wheaton, 326.)

No right of asylum.

The decisions of those courts that have held against the right of interstate rendition where the prisoner was only constructively present within the state, proceed upon the theory of the right of an asylum, and the question is discussed, as it would be between independent sovereignties anxious to uphold their separate rights and dignities, and not as a question between states bound by common interests and by the desire to promote the general welfare and domestic tranquility. With the great increase in population, with the wonderful development of the national resources and growth of commerce and manufactures and the perfection of new and quicker methods of communication, has come closer commercial union of the people in different parts of the country. This is a period of great expansion in population, territory and in commerce, and with that increase, unfortunately, has come an increase in crimes against person and property. The ingenuity of the criminal, especially in crimes against property, has kept pace with the genius of the time. The perfection of the mail and express system, the growth of the railroad system and speed of trains, the perfection of the telegraph and the marvelous uses of the telephone bring all the people of the country into closer communication; and the effective use of those agencies by criminals calls for a more determined and united enforcement of the criminal laws. We have progressed since 1787, and much of that progress is due to the liberal construction of the constitution. It has always been the policy of the United States supreme court to adopt such a construction as would really establish justice and insure domestic tranquility, provide for common defense and promote the general welfare. In the cases of Kerr v. Illinois, Lascelles v. Georgia, Mahon v. Justice, Howard v. Jenison herein cited, these varying claims of right of asylum, state sovereignty, liberty of the individual have been urged without success. The uniform tendency of the decisions has been to place the doctrine of interstate rendition on the broadest possible basis. In the case of foreign extradition the courts have followed the treaties in the interest of peace and

national honor. They have construed those treaties strictly because the treaty conditions required it, because the nation was bound in honor to observe the terms of the treaties; but wherever an attempt has been made to limit the terms of the constitutional provision, with reference to interstate rendition, the court has steadily set its face against a strict construction.

What does article 4 of the constitution mean, if it does not intend to place all the people of the country on an equality, irrespective of territorial bounds? That article provides that the public acts, records and judicial proceedings of each state shall receive full faith and credit everywhere within the United States, and this provision includes the records and judicial proceedings of the courts of every kind and description, and to them full faith and credit must be given. Thus, is the judicial dignity of the state maintained. The next section provides that citizens of each state shall have the privileges and immunities of citizens of the several states, and so wherever one may go within the territory of the United States he is entitled to all the rights, privileges and immunities of the citizens of the state wherein he happens to be, and does it not necessarily follow that he shall be subject to the correlative burdens and obligations? As to the rights, privileges and immunities there are no boundaries, then why should the state boundary be an impassible barrier to criminal prosecution? The state of Tennessee cannot deny to the defendant-in-error any right or privilege held or exercised by any citizen of the state of Tennessee; whether he goes within that state or not he is entitled to the same protection, the same rights, privileges and immunities as are enjoyed by the citizens of that state; his business interests, his property must receive the same care and protection. He has the same right to appear in the courts and enforce his rights or redress his wrongs as any citizen of the state of Tennessee. Does it not necessarily follow that Corkran is subject to the same obligation of obedience to the laws of the state of Tennessee, and is he not liable to the same punishments as are or may be inflicted upon a citizen of the state of Tennessee? There is no north, no south, nor east nor west, but everywhere we are citizens of one land, enjoying the same right and privileges, and can it be said that when a crime is committed this fabric dissolves into forty-five

separate parts, each one of which is an asylum of refuge to the criminal who enters its territory? "The plain answer to this contention is that the laws of the United States do not recognize any such right of asylum as is here claimed, on the part of a fugitive from justice in any state to which he has fled." (Mahon v. Justice, 127 U. S., at 715.) "But the fallacy of the argument lies in the assumption that the states of the union occupy towards each other, in respect to fugitives from justice, the relation of foreign nations, in the same sense in which the general government stands towards independent sovereignties on that subject, and in the further assumption that a fugitive from justice acquires in the state to which he may flee the same state or personal right of protection, improperly called a right of asylum, which secures to him exemption from trial and punishment for a crime committed in another state, unless such crime is made the special object or ground of his rendition * * * the sole object of the provision of the constitution and the act of congress to carry it into effect is to secure the return of persons accused of crime, who have fled from the justice of a state, whose laws they are charged with violating." (Lascelles v. Georgia, 148 U. S., at 542.)

When an attempt was made to limit the meaning of the phrase "other crime," it was promptly met by the decision of this court in Kentucky v. Dennison, and Lascelles v. Georgia, with the broad ruling that "other crime" meant every offense that was made punishable by the laws of any state, and that no one state had the right to sit in judgment upon the policy or necessity of the criminal laws of any other state. When an attempt was made to exclude the territories from the effect of the constitutional provision, it was held that the word "state" included states and territories. (Ex parte Reggel, 114 U. S., 642.) When an attempt was made to sustain the doctrine that a person charged with crime and sent from one state to another on demand could not be tried for any other crime than that stated in the requisition papers, it was held that there was no place in the law of interstate rendition for such a doctrine. And when an attempt was made to make an abduction, or kidnapping, or enticing a person within the limits of a state by improper means a defense, the courts again, following their liberal rules, rejected the theory and held that it mattered not

how a man was brought within the jurisdiction of a court; once there he was liable to trial and punishment. It is to be noted that all of those contentions proceeded upon the theory that the states were independent sovereignties, and that in considering the question of interstate rendition the states must be placed upon the plane of foreign nations treating with each other, and it is also to be noted that in overruling each and every one of these contentions the court has denied the theory of independent sovereignty and has given to the constitutional provision the effect of a general police regulation, enforcible and binding upon every state and territory within the union. If a man, charged with one crime and surrendered upon demand, may be tried for any other crime when brought within the jurisdiction of the demanding state, then what reason is there for subjecting to trial and imprisonment the man who commits a crime while personally present within a state and exempting from trial and imprisonment the man who commits the crime without stepping across the boundary line? Does not such a construction of the law tend to disturb the domestic tranquility and induce kidnapping and other unlawful methods of forcibly bringing a criminal within the jurisdiction of a state?

"If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well-settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction." (Gibbons v. Ogden, 9 Wheaton, 188.)

"This provision of the constitution has two objects; the procuring possession of the offender, and the prevention of irritation between the states, which might arise from giving asylum to each other's criminals, and from violently invading each other's territory to capture them. It clearly implies that there shall be no resort to force for this purpose. The constitution has abrogated, and the states have surrendered, all right to obtain redress from each other by force. The constitution was made to "establish justice" and "insure domestic tranquility;" and to attain this end as between the states themselves, the judicial power was extended "to controversies between two or more states," and they were enjoined to deliver up to each other fugitives from justice

when demanded, and even fugitives from service." (Mahon v. Justice, 127 U. S., at 716.)

Decision makes constitutional provision only half effective.

The constitutional provision should not be weakened and made only half effective by this narrow construction of the phrase "from which." We should look rather for the dominating principle of construction, to the closing phrase of the section which defines clearly the state having the right to demand rendition, namely, "the state having jurisdiction of the crime," and particularly so because in the construction of amendment 6 it was held that the right to a trial in the state or district wherein the crime was committed did not mean the state or territory wherein the defendant resided or was personally at the time the crime was committed, but the state or territory wherein the crime was committed. (In re Palliser, 136 U. S., 265.) And so it should be held that article 4, section 2, subdivision 2 does not mean the state wherein the defendant was personally at the time the crime was committed, but the state wherein the crime was committed, "the state having jurisdiction of the crime."

The decision of the court below is a long step backwards, and is an adoption of the policy of strict construction. It is adopting a rule of construction which, if followed as to all the other provisions of the constitution, would have weakened that charter to the point of uselessness. Judge Story, in his commentaries on the constitution, said: "It is of vital importance to the public administration of criminal justice and the security of the respective states that criminals who have committed crimes therein should not find an asylum in other states, but should be surrendered up for trial and punishment. It is a power most salutory in its general operation by discouraging crimes and cutting off the chances of escape from punishment. It will promote harmony and good feeling among the states and will increase the general sense of the blessings of the national government. It will, moreover, give strength to a great moral duty, which the neighboring states especially owe to each other by elevating the policy of the mutual suppression of crime into a legal obligation. Hitherto it has proved as useful in practice as it is unexceptionable in its character." (2 Story on Const., sec. 1809.)

Amendment necessary.

Neither the constitution nor the acts of congress provide that only those who, when physically present within the territorial jurisdiction of the demanding state, commit a crime and depart therefrom, are fugitives from justice; and in order to sustain the strict construction claimed by the relator it will be necessary to read such a phrase into the constitution. The constitution provides that "A person charged in any state with treason, felony, or other crime;" it does not provide "A person who commits treason, felony, or other crime, when actually within the state, etc." All that is necessary is that the person be charged with having committed a crime within the state, and that the state wherein the crime was alleged to have been committed should have jurisdiction of the offense. Those elements are present in this case. Proper indictments were sent to the governor of this state charging Charles E. Corkran with the commission of the crime of larceny and false pretenses. The state of Tennessee has jurisdiction of such crimes. He has fled from justice, within the meaning of the constitution, because he was within the state of Tennessee July 2 and July 16, 1901 (pages 7-9), eight days and twenty-four days, respectively, after the time when it is charged the last offense was committed. It appears that he has left the state of Tennessee and has never returned to it. It also appears that he is resisting the efforts of the state of Tennessee to secure his return to that jurisdiction for trial; consequently, within the decision of the United States supreme court in Roberts v. Reilly, he is a fugitive from justice. As was said in that case: "The fact that he has not been within the state since the finding of the indictment is irrelevant and immaterial."

It is not the policy of the law to screen criminals from the legal consequences of their crimes. Courts should not, by strained construction, establish asylums for fugitive criminals. If the laws of a state have been violated and crime committed, the wrong-doer should be punished. He should be surrendered by the authorities in whose jurisdiction he has sought refuge to the demanding state for trial. It would be a monstrous doctrine that would make New York state an inviolable sanctuary for criminals who perpetrate

their offenses by false tokens, fraudulent paper or representations communicated by mail or innocent agents. Such a decision would afford to "bunco men," "green-goods dealers" and commercial swindlers a haven of refuge within this state and would be a security to them in plying their games and frauds. Safe within this state they could plan and carry into effect their criminal purposes, plunder the merchants, banks and tradesmen of other states. In these days of great commercial enterprise, carried on for the most part upon credit, when there is every opportunity to create and maintain a false standing, when the merchants of the south and west are dealing with New York merchants through agents and by correspondence, when New York merchants are so largely dependent upon credit ratings, this is the last state that should establish the ruling that crimes committed by persons not actually within the demanding state are not extraditable, we would be exposing ourselves to woeful retaliation by the other states of the union.

There is no place in the law of interstate rendition for the doctrine that actual presence in the demanding state at the time of the commission of the offense charged shall be *conditio sine qua non*. Frauds are attempted and committed by and through "endless chains of letters," advertisements of "get-rich-quick" schemes, sure methods of stock trading, betting on horse races and like schemes. "Community of interest" in trade and manufactures, with its attendant consolidation of interests widely scattered, opens a vast field for fraudulent operations. Such consolidations permit of the incorporation of companies in different states, false credit ratings, the fraudulent use of commercial paper and an ample opportunity to commit larceny by means of unwary and innocent clerks and agents. Is New York state to be made the haven of all those swindlers?

One offending against the laws of the United States may be sent to any part of the country.

One of the reasons suggested by the court below for its decision was that persons might be taken from their home and friends to places at a great distance and tried among strangers, but there is

no reason why the court should be so tender of the feelings of the criminal. So far as offenses against the laws of the United States are concerned, a man may be transported from Maine to California or from Oregon to Florida and tried for crimes committed, even though he was the width of the continent from the scene of the crime at the time of its commission. Section 731 of the revised statutes of the United States provides: "When any offense against the United States is begun in one judicial district and completed in any other, it shall be deemed to have been committed in either and may be dealt with, inquired of, tried, determined and punished in either district, in the manner, and as if it had been actually and wholly committed therein," and in the cases of Horner v. United States (143 U. S., 207), and In re Palliser (136 U. S., 257), the defendants were, in the Horner case, sent from the southern district of the state of New York to the southern district of the state of Illinois for trial, and in the Palliser case, sent from the southern district of New York to the southern district of Connecticut to be tried for crimes committed by sending through the mails illegal matter, and these cases recognize the right, so far as offenses against the United States are concerned, to send a man any distance, and it is immaterial whether or not he was in the district in which the crime was committed at the time of its commission so long as he has committed the crime within the district he may be sent to any distance.

"Reference was made in argument to the question, often disputed, where an indictment for murder shall be tried, when a person mortally wounded in one jurisdiction afterwards dies in another jurisdiction? (See Commonwealth v. Macloon, 101 Mass., 1, and authorities there cited; The Queen v. Keyn, 2 Ex. D., 63; 11 Am. Law Review, 615; State v. Bowen, 16 Kan., 475; United States v. Guiteau, 1 Mackey, 498.) But there the original unlawful act is not only done by the offender, but reaches the person at whom it is aimed, in one jurisdiction, and it is the subsequent effect only which takes place in another jurisdiction. We have no occasion now to consider such a case beyond observing that before the Declaration of Independence provision had been made by statute, both in England and Ireland, for trying such cases in either jurisdiction, and was never supposed to be

inconsistent in principle with the provision of Magna Charta (c. 14), for trial by a jury of the vicinage. (1 East P. C., 366; 1 Gabbett's Crim. Law, 501.) It is universally admitted that when a shot fired in one jurisdiction strikes a person in another jurisdiction the offender may be tried where the shot takes effect, and the only doubt is whether he can be tried where the shot is fired. (Rex v. Coombes, 1 Leach [4th ed.], 388; United States v. Davis, 2 Sumner, 482; People v. Adams, 3 Denio, 190, 207, and 1 N. Y. 173, 176, 179; Cockburn, C. J., in The Queen v. Keyn, 2 Ex. D., 233, 234.)

When a crime is committed partly in one district and partly in another, it must, in order to prevent an absolute failure of justice, be tried in either district, or in that one which the legislature may designate; that congress has accordingly provided that, "when any offense against the United States is begun in one judicial district and completed in any other, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined and punished in either district, in the same manner and as if it had been actually and wholly committed therein." (Rev. Stat., sec. 731.)

When an offense is committed by means of a communication through the post-office, the sender has sometimes, as appears by the cases cited for the petitioner, been held to be punishable at the place where he mails the letter. (United States v. Worrall, 2 Dall., 384; United States v. Bickford, 4 Blatchford, 337; Rex. v. Williams, 2 Campbell, 506; The King v. Burdett, 3 B. & Ald., 717, and 4 B. & Ald., 95; Perkin's Case, 2 Lewin, 150; Regina v. Cooke, 1 Fost. & Finl., 64; The Queen v. Holmes, 12 Q. B. D., 23; S. C., 15 Cox Crim. Cas., 343.) But it does not follow that he is not punishable at the place where the letter is received by the person to whom it is addressed; and it is settled by an overwhelming weight of authority that he may be tried and punished at that place, whether the unlawfulness of the communication through the post-office consists in its being a threatening letter. (The King v. Girdwood, 1 Leach, 142; S. C., 2 East P. C., 1120; Esser's Case, 2 East P. C., 1125); or a libel (The King v. Johnson, 7 East, 65; S. C., 3 J. P. Smith, 94; The King v. Burdett, 4 B. & Ald, 95, 136, 150, 170, 184; Commonwealth v. Blanding, 3 Pick.,

304; In re Buell, 3 Dillon, 116, 122); or a false pretense or fraudulent representation (Regina v. Leech, Dearsley, 642; S. S., 7 Cox Crim. Cas., 100; The Queen v. Rogers, 3 Q. B. D., 28; S. C., 14 Cox Crim. Cas., 22; People v. Rathbun, 21 Wend., 509; People v. Adams, 3 Denio, 190, and 1 N. Y., 173; Foute v. State, 15 Lea [Tenn.], 712)." (In re Palliser, 136 U. S., 265.)

And when the offense is against the state laws the criminal should be surrendered.

The courts of the United States have steadily refused to inquire into the means by which a person is brought within the jurisdiction for trial and punishment. Where an arrest has been made illegally (In re Johnson, 167 U. S., 120), or where a person has been kidnapped within a foreign jurisdiction and brought within a state for trial (Kerr v. Ill., 119 U. S., 436); or where a person has been surrendered upon one charge and brought within a state and tried for another charge (Lascelles v. Georgia, 148 U. S., 542), the courts has consistently held that none of these acts constitute a defense, and that once within the jurisdiction the person may be tried and punished for any offense. And there is only one exception known to the law aside from the exception made by the court below, and that is where fugitives have been surrendered pursuant to the provision of extradition treaties with foreign powers, and there the courts have held that a person surrendered upon one charge can be tried on that charge only, and the basis of those decisions is that the surrender is based upon the treaty as a matter of comity, and foreign powers are bound to observe the condition of the treaties.

Thus, it appears that no matter how a person may be brought within the jurisdiction of the court he may be tried and punished, and that so far as offenses against the United States are concerned, a person may be sent the length or breadth of the United Sta for trial and punishment, and that it is immaterial whether or not he was within the state or district wherein the crime was committed at the time of its commission. What reason, then, is there for ingrafting upon the law of interstate rendition the exception found in the decision of the court below? As was held in the Palliser case, a man may be sent from New York to Illinois and be tried for the crime of causing to be delivered by mail a lottery

certificate, in spite of the fact that the certificate was delivered and the crime committed in the southern district of Illinois at a time when the prisoner was in the state of New York. As was held in the case of Horner v. United States (143 U. S., 207), a man may be sent from New York to Connecticut to be tried for the crime of offering money to a postmaster with the intent to influence him to commit a fraud against the United States when the offender was within the state of New York at the time the offense was committed in Connecticut. Then, why not may a man be sent from the state of New York to the state of Tennessee where he has committed the crime of larceny, although not actually in the demanding state at the time the offense was committed?

All throughout this country there are many cities, large and small, and villages on opposite sides of state boundaries, some separated by a river and others only by an imaginary boundary line. For example, we find New York city in the state of New York separated by the Hudson river from Hoboken, and Jersey City in the state of New Jersey. We find St. Louis, Missouri, on one side of the Mississippi river, and we have East St. Louis, Illinois, on the opposite side. Instances might be multiplied where there is no water divison and nothing but the established boundary line. A person may shoot and maim or kill another across the line, or hurl a lighted missile across the boundary and commit arson, send an innocent messenger and commit larceny by pretenses, or commit larceny by the use of the telephone or telegraph or mail, and be absolutely exempt from the trial and punishment in the state wherein the crime was committed, when, if the same person, by the same means, offended against the laws of the United States, he could be surrendered and sent into the other state or district for trial and punishment. Can it be possible that an invisible line of demarcation shall be regarded as an unsurmountable barrier against the just demands of the neighboring state, so far as crimes against the laws of the state are concerned, when, as to offenses against the United States, the width of the continent is no protection?

Tennessee is state having jurisdiction of the crime.

The crime charged in the indictments herein was the crime of grand larceny and false pretenses. The defendant-in-error could have "committed the crime within the state" of Tennessee, although never physically present within the state. (Adams v. People, 1 N. Y., 173; State v. Grady, 34 Conn., 118; Comm. v. White, 123 Mass., 430; Comm. v. Smith, 93 Mass., 243; Lindsey v. Smith, 38 Ohio St., 507; United States v. Davis, 2 Sumner, 482; Reg. v. Barrett, 22 Eng. Law and Eq., 611; Reg. v. Brisac, 4 East, 164; State v. Chapin, 17 Ark., 565; State v. Morrow, 40 S. C., 211; Noyes v. State, 41 N. J. L., 418; Simpson v. State, 92 Ga., 41; Hatfield v. Comm., 12 S. W., 309.)

"When the commission of an offense commenced without this state is consummated within its boundaries, the person committing the offense is liable to punishment therefor in this state, although he was out of the state at the commission of the offense charged; if he consummated it in this state through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself, and in such a case the jurisdiction is in the county in which the offense was consummated, unless otherwise provided by law." (Sec. 5801, M. & V. Code [Tenn.])

And again, in the case of Palliser (136 U. S., at page 257) the court, in referring to the sixth amendment of the constitution which provides: "In all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed," said: "But the right thereby secured is not a right to be tried in the district where the accused resides, or even in the district in which he is personally at the time of committing the crime, but the district 'wherein the crime shall have been committed'" distinctly recognized the fact that crime might be committed within states and judicial districts by persons not physically present within the state or district at the time of its commission, and that such persons could be tried in the state having jurisdiction.

Plaintiff in error returned only paper he had.

There seems to be some criticism in the opinion of the court below of the plaintiff-in-error for the failure to return all the papers that were used before the governor, but the plaintiff-in-error should not be criticised for this, nor should any unfavorable presumption be indulged in as against him, for the reason that it is the invariable rule of the executive of the state of New York to refuse to return any paper in an extradition case other than the warrant, and this rule is based upon the opinion prevailing in the executive department that the courts of the state have no jurisdiction to review the governor's action. However this may be, if the defendant-in-error desired to use any of those papers, they were just as accessible to him as they were to the plaintiff-in-error, and, if there was anything in them favorable to him, he might have attached copies of the papers, either to the petition or to his traverse. Plaintiff-in-error returned the only paper that ever came into his possession, namely, the warrant.

However, in addition to such papers as were filed before the governor on the hearing, considerable time was spent in giving oral testimony and in discussion of the case, and Corkran made several statements with reference to the matter, none of which were taken down, but all of which was material and have great influence with the governor in coming to his decision.

There seems to be an intimation that this case was solely based upon a charge of false pretenses, and, as that was a crime, a charge of which might be easily fabricated for the purpose of compelling the payment of a debt, that the court should be slow to assist in bringing the offender to punishment. That is not a fair argument, nor is it an argument against the right of rendition. False charges of any crime could be made against any one, and there is no more reason for withholding the power of the court in the case of false pretenses than there would be where the charge was murder or forgery. If the charge is false, it is easily met; if the charge is true, it ought to be tried out and punishment awarded. To say, however, that the court should be slow to act where the charge of false pretenses is made, because possibly the charge is not true, is unwarranted; it is as unsound an argument as an argument to repeal the penal code, because false charges of crime have been made in the past.

Larceny is a crime and the merits cannot be tried in *habeas corpus*.

It is said that it is hard to send a man from his home and friends to a distant jurisdiction for trial, but there is no real hardship in this. When a man commits a crime within another jurisdiction he thereby selects the jurisdiction wherein the trial shall be had, and there is no burden imposed when the courts compel him to abide by his own selection. It would be a greater hardship to require prosecuting authorities to go to the distant place of his home and appear, first, before a committing magistrate, second, before a grand jury, and lastly, in a trial court, and to bring on these three occasions all the witnesses and documents.

SCHERER & DOWNS,
Attorneys for Plaintiff-in-Error,
Albany, N. Y.

ROBERT G. SCHERER,
J. MURRAY DOWNS,
Of Counsel.

January 5, 1903.

FILE COPY.

FILED
JAN 2 1903
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

FILE No. 492.

JAMES L. HYATT, AS CHIEF OF POLICE OF THE CITY OF ALBANY, *Plaintiff-in-Error*,

against

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF CHARLES E. CORKRAN, *Defendant-in-Error*.

BRIEF OF DEFENDANT-IN-ERROR.

WILLIAM S. BRYAN, JR.,
A. DeR. SAPPINGTON,
Counsel for Defendant-in-Error.

34708

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

FILE No. 492.

JAMES L. HYATT, AS CHIEF OF POLICE OF THE CITY OF ALBANY, *Plaintiff-in-Error*,

against

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF CHARLES E. CORKRAN, *Defendant-in-Error*.

BRIEF OF DEFENDANT-IN-ERROR.

This Writ of Error is from a judgment of the Court of Appeals of New York, discharging on *Habeas Corpus* the Defendant-in-Error, Charles E. Corkran, from the custody of the Plaintiff-in-Error, as Chief of Police of the city of Albany, by whom the right to detain him in custody was claimed under a warrant issued by the Governor of New York for the extradition of said Corkran, charged with the commission of the crime of larceny and false pretences in the State of Tennessee.

It is respectfully submitted that no Federal question is involved in the case; that the sole issue raised on the Record, and the sole issue determined by the Court of Appeals of New York, was one of fact, *i. e.*, that the Defendant-in-Error was not a fugitive from justice from the State of Tennessee.

STATEMENT OF THE CASE.

On March 13, 1902, Charles E. Corkran, the Defendant in Error, sued out a Writ of *Habeas Corpus* before Mr. Justice D. Cady Herrick, of the Supreme Court of New York, claiming that he was unjustly restrained of his liberty by the Plaintiff-in-Error. (Record, pages 2, 3.)

On March 17, 1902, the Plaintiff-in-Error made his return to the Writ of *Habeas Corpus*, stating that Corkran was in his custody and detained by him "as Chief of Police of the City of Albany, under and by virtue of a Warrant issued by the Governor of the State of New York, for the extradition of said Charles E. Corkran, charged with the commission of the crime of larceny and false pretences *in* the State of Tennessee." (Record, page 4.)

As part of the return was a copy of the Governor's Warrant. This Warrant, dated March 13, 1902, recites: "*It having been represented to me by the Governor of the State of Tennessee* that Charles E. Corkran stands charged in that State with having *committed therein, in the county of Davidson*, the crimes of *larceny* and *false pretences*, which the said Governor certifies to be crimes under the laws of the said State, and that the said Charles E. Corkran has *fled therefrom* and taken refuge in the State of New York." (Record, page 5.) The Warrant further recites that the Governor of Tennessee demands of the Governor of New York "pursuant to the Constitution and laws of the United States," that he cause said Corkran to be arrested and delivered to a named agent duly authorized to receive said Corkran into his custody, "and to convey him *back* to the said State of

Tennessee, which said demand is accompanied by copies of indictment and other documents duly certified by the said Governor of Tennessee, to be authentic and duly authenticated, and charging the said Charles E. Corkran with having committed the said crimes *and fled from* the said State of Tennessee, and taken refuge in the State of New York." (Record, page 5.)

No copies of the indictments referred to in this Warrant were filed with the return of the Plaintiff-in-Error, or offered in evidence later in the case.

On the same 17th day of March, 1902, the Traverse of the Defendant-in-Error to this return was filed. In it he denies under oath "that he committed either the crime of larceny or false pretences *or any other crime* in the State of Tennessee." He further denies that he was *within the State of Tennessee* at the times mentioned in the indictments. He states that he has read the indictments and that they charge him with the commission of the crime of larceny and false pretences on the 20th and 30th days of April, 1901, the 8th day of May, 1901 and the 17th day of June, 1901, and the 24th day of June, 1901. Deponent further says that he was not in the State of Tennessee at any time in the months of March, April, May or June, 1901, or at any time for more than a year prior to the month of March, 1901. Deponent further denies that he *fled from* the State of Tennessee, or that he is a *fugitive from the justice* of the State of Tennessee." (Record, page 6.)

The Traverse then avers that Corkran has heard read the papers accompanying the requisition of the Governor of the State of Tennessee "and that said papers do not contain any evidence or proof that said Charles E. Corkran was in the State of Tennessee at any stated times since the 26th and 27th days of May, 1899, and do not contain any evidence or proof that the said Charles E. Corkran was in the State of Tennessee on any day in any of the months

set forth in said indictments when the said crime or crimes are alleged to have been committed." (Record, page 8.)

It will be seen that the recital in the Governor's Warrant was that it was charged that Corkran had committed the crime of larceny and false pretences *in* Tennessee on certain dates; and that the denial was that he had committed the crimes *at all*, and also that he *had been within the State of Tennessee* at the time of their alleged commission.

As the guilt or innocence of the alleged fugitive is not open to enquiry on extradition proceedings, the traversable allegation was, of course, that Corkran had not been in Tennessee at the time when it was claimed that the crimes had been committed. This *jurisdictional fact* was denied, and this denial so far as the Record discloses (and the Record must be taken, it is submitted, as conclusive on the subject) raised the sole issue in the case.

Neither in the Petition for the Writ of *Habeas Corpus*, nor in the Traverse of the Plaintiff-in-Error to the return, is there set up any denial of the validity or efficiency of the Act of Congress regulating extradition, nor is any construction of that Act called for.

The enquiry is simply, whether the allegation in the requisition that Corkran having committed a crime *in Tennessee*, then departed from that State, is true or false?

It will be shown from the Record that *this question of fact* was decided by the Court of Appeals in favor of the Defendant-in-Error.

ARGUMENT.

The issue presented by the pleadings being whether Corkran was in the State of Tennessee when the alleged crimes were committed, it is clear on authority that whether the decision of the Governor of the Asylum State shall be final on the question as to whether the person sought to be extradited was in fact a fugitive from the justice of the

demanding State, is a question proper to be determined by the Courts of that State.

Cook vs. Hart, 146 U. S. 193.

That in New York such enquiry is open to the Courts of that State on *Habeas Corpus*, appears from the decision below in the case at bar.

Said JUDGE CULLEN (Record, page 24):

"The fact that he is a fugitive from justice is, therefore, a matter of proof. While the Warrant of the Governor is presumptive evidence of the fact, there is no reason on principle why it should be conclusive."

The learned Judge then gives reasons and cites authorities to show that this question is open for investigation by the Courts, and then adds (Record, page 25):

"If, therefore, on the return to the Writ, it was clearly shown that the relator was not a fugitive from justice and there was no evidence from which the contrary view could be entertained, which is the fact in this case, as appears by the stipulation and concession of the parties, there is no reason why greater efficiency should be given to the Warrant of extradition than to the Warrant of any other Magistrate, *by* which a citizen is imprisoned, or deprived of his liberty."

Still further on in his Opinion, the learned Judge (Record, page 26) said:

"In the *Jones* Case it is said: 'The Governor of this State is not clothed with judicial powers and there is no provision of the Constitution or laws of the United States, or of this State which provides that his determination is final and conclusive in the case of the extradition of the citizen. In the absence of such a provision we hold that the decision of Governor only makes a *prima facie* case; that it is competent for the Courts in a proceeding of this character to inquire into the correctness of his decision, and discharge the prisoner.'

"In the *Mohr* Case the learned Court said: 'We are of opinion that the probate Judge did not err in discharging the petitioner, and that it was competent for him to hear oral evidence in order to establish the fact that the petitioner was not a fugitive from justice. Any other conclusion than this would establish a doctrine very dangerous to the liberty of the citizen. It would greatly impair the efficacy of the proceeding of *Habeas Corpus*, which has been characterized as the great writ of liberty, and may be regarded not less than the trial by jury, as one of the chief corner stones in the structures of our judiciary system.'"

JUDGE CULLEN then (Record, pages 26, 27) states as an additional reason why the person sought to be extradited should be permitted to controvert the recitals in the Governor's Warrant: "The further suggestion, however, may be made that no law gives a person sought to be extradited the *right* to a hearing before the Governor, or to submit evidence in his behalf. Whatever in these respects may be accorded by the Governor to the accused is a matter of favor, not of right. Therefore, unless he may review his extradition on *Habeas Corpus*, a citizen on the fiat of an executive officer, without a hearing, may be transported, a prisoner to the utmost confines of the country."

JUDGE O'BRIEN in his concurring opinion was equally explicit. He said: "The Warrant on its face stated that it had been represented to the Governor of this State by the Governor of Tennessee that the relator was charged in that State with the crime of larceny and false pretences, and that he had fled from the State and taken refuge in this State. These statements on the face of the Warrant were to be taken as presumptively true in the first instance, and, if the enquiry rested there, the defendant had made out a *prima facie* case to justify the detention. It is important here to note, and to keep always in view, that when the Defendant presented the executive Warrant without any other document or paper or any proof of the facts therein stated, he raised only

a presumption. The Warrant did not conclusively establish the facts recited. It was so held by this Court *(People ex rel. Lawrence v. Brady, 56 N. Y. 182)*, and the law as laid down in that case has never been modified but has been repeatedly approved. Indeed I do not understand that there is now any difference of opinion as to the legal effect of the Warrant as evidence. It raised a presumption, but nothing more. I am not aware of any case in any Court of controlling authority where it was held to be conclusive and no reason is given why it should be." (Record, page 28.)

The view of the Court of Appeals of New York that the recitals in the Warrant of the Governor are only *prima facie* and are liable to be rebutted by proof on *Habeas Corpus* is the prevailing view.

Ex parte Todd, 47 L. R. A. 566.
Matter of Cook, 49 Fed. Rep. 823.
Ex parte Hart, 63 Fed. Rep. 260-1.
Work vs. Conington, 34 Ohio St. 64.
Matter of Manchester, 5 California, 237.
15 Am. and Eng. Encyclopædia of Law, (2d Ed.) 205.

The Court of Appeals of New York then discusses the question of fact whether Corkran had been present in the State of Tennessee at the time the assumed crimes were committed, and had then withdrawn himself from the Jurisdiction of the Courts of that State. The proof on that subject consisted of the testimony of Corkran taken at the hearing before Judge Herrick. (Record, pages 8 and 9.) In this testimony he states that he was in Tennessee on July 2, 1901, and again on July 16, or 17, 1901, and that before these two occasions he had not been in that State since about May 26, or 27, 1899. On July 2d, he was in Nashville for one day on business. He, on that day, called on and notified the Union Bank and Trust Company (on whose claim the indictments against him were found) of his business in Nashville, and of what had been done there. On

July 16th or 17th, Corkran states that he was not in Nashville at all; he merely spent one day in Chattanooga. Corkran's testimony is not contradicted or impeached in any way.

In addition to this uncontradicted evidence, which is the sole proof in the case, there are two agreements of Counsel, one (Record, page 7) stating: "It is conceded that the relator was not within the State of Tennessee between the first day of May, 1899, and the first day of July, 1901.

"It is also conceded that the relator was in the State of Tennessee on the 2d day of July, 1901."

The Second Agreement was made, apparently from the Record, after the hearing before JUDGE HERRICK, and before the hearing on Appeal in the Appellate Division of the Supreme Court; it stipulates, "that three indictments were attached to the requisition papers sent by the Governor of the State of Tennessee to the Governor of the State of New York for the extradition of Charles E. Corkran; that each of the said indictments was found on the 26th day of February, 1902, and that the alleged crimes were charged in said indictments to have been committed on the 1st day of May, 1901, on the 8th day of May, 1901, and on the 24th day of June, 1901, respectively." (Record, page 7.)

It would seem that these admissions effectually disposed of the case of the State of Tennessee, or the Union Bank and Trust Co. or whoever is the real actor in this attempt to extradite Corkran by showing *conclusively* that Corkran had not been in Tennessee when the assumed crimes were alleged to have been committed, and that he therefore could not have been, as to those crimes, a fugitive from justice. Even if the testimony had shown the facts to be otherwise (as it does not) the Court would have been bound by the admissions of the parties. As was well said by the Court of Appeals of Maryland in *Schaidt v. Blaul*, 66 Md. 146: "And although the parties have made a mistake in referring its (the easement being discussed) origin to the deeds exhibited with the Bill of Complaint, we must give effect to

34712

their admissions, and we can not make a controversy for them over this matter, when they have stated that they have none with each other."

And the Court of Appeals of New York and also JUDGE HERRICK in the Supreme Court (Record, page 10), found the facts in accordance with the written admissions of counsel and the uncontradicted testimony in the case, and found that Corkran had not been in the State of Tennessee and therefore had not fled from the justice of that State.

JUDGE CULLEN in his opinion said: "It is not claimed that the offences for which the extradition of the relator was sought were committed when he was in the State of Tennessee, but it is contended that though not corporeally present at the time of the commission of the offence, he may nevertheless be properly surrendered as a fugitive from the justice of that State, where it was committed." (Record, page 18.)

Again he stated: "But the question in the present case is not one of *alibi*, for stipulation of the parties admits that the defendant was not personally present in the State of Tennessee at the commission of the alleged offences." (Record, page 27.)

For other Statements of the learned Judge to the same effect in other portions of his Opinion, see Record, pages 22 and 23.

In JUDGE O'BRIEN'S concurring Opinion, he said: "It having been conclusively established that the relator was not in the demanding State on the dates when the crimes are charged to have been committed, it follows that he could not have committed the offences and certainly could not have *fled* from the justice of the demanding State. The authorities are unanimous in holding that a person cannot be a fugitive from the justice of the demanding State who was not in that State when the crime charged is alleged to have been committed." (Record, page 29.)

And again: "The demanding State, its agent and counsel for some reason elected to withhold all proof of the facts and circumstances of the alleged larcenies and to stand upon the bare recitals in the Warrant. The *prima facie* proof that the State gave consisting only of the recitals of the Warrant, that the relator was personally present there at the dates named and committed the crimes, was superseded and removed by the solemn and conclusive admissions in open Court that he was not there at the time and consequently could not have fled from justice." (Record, page 30.)

And still again: "But the question whether the relator committed larceny in the State of Tennessee at any time when he was personally present there is not really in the case at all, since there is not now and never was, any serious claim, that he was in that State when the crimes charged were committed, otherwise than constructively." (Record, page 31.)

It will be seen by inspecting JUDGE HAIGHT'S dissenting opinion that he differed from his colleagues, not on any question of law, but as to the proper inference of fact to be drawn from the testimony of Corkran and from the agreements of counsel. This learned Judge seemed to think that because the date laid in the indictment did not have to be proved as averred, that it could be inferred that the agreement of counsel did not mean what it apparently said, *i. e.*, that Corkran was not present in Tennessee when the assumed crimes were committed, but that it merely meant that while Corkran was not present on the dates laid in the indictments, it could still be *inferred*, (in the absence of all proof,) that the offences were committed on some other days, on which dates it might *be inferred* that Corkran was present.

If the Agreements of Counsel were to have this meaning they would truly be a delusion and a snare. It would require considerable ingenuity to suggest any sane reason

why the relator's counsel should have made an agreement which had this meaning and which was therefore absolutely valueless. Equally untenable, it is respectfully suggested, is the criticism of Corkran's testimony. Says the learned Judge: "In neither the petition, affidavit, or testimony does he swear that he was not in the State when the offences charged were committed, but has refrained from so testifying." (Record, page 34.)

When it is remembered that Corkran had sworn (Record, page 6), that he denies "that he committed either the crime of larceny or false pretences *or any other crime* in the State of Tennessee," it is a little difficult, with deference, be it said, to understand how he could be expected to deny in any other manner than he did, that he was in Tennessee when crimes were committed which he swears were never committed at all. All that he could do after stating that the crimes were never committed was to state that he was absent from the State when the crimes were pretended to have been committed. But the best answer to this contention is given by JUDGE CULLEN (Record, pages 23, 24), when he shows that the learned Counsel for the Plaintiff-in-Error put the same interpretation on the Agreement of Counsel, which the majority of the Court of Appeals of New York placed upon it, and which it is respectfully submitted is the only interpretation which in fairness it could bear.

If the facts were open for review, it is respectfully maintained, that there was obviously no error in the conclusion reached by the Court of Appeals of New York, and that that finding should be affirmed.

But the finding of that Court on the facts is not open for review in this proceeding. Nothing is open for review on this Writ of Error, but such rulings in law as erroneously decide some Federal question against the Plaintiff-in-Error.

It is well settled that on a *Writ of Error*, this Court will confine itself to an examination of such of the *questions*

of law decided by the Court below as are properly reviewable here, and that it can not, and will not, review the findings of that Court on *questions of fact.*

In re Neagle, 135 U. S. 42.
Gardner vs. Bonestell, 180 U. S. 370.
Dower vs. Richards, 151 U. S. 658.
In re Buchanan, 158 U. S. 36.
Hedrick vs. Atchison, Topeka, etc. R. R., 167 U. S. 677.
Turner vs. N. Y., 168 U. S. 95.
West. Union Tel. Co. vs. Call Pub. Co., 181 U. S. 103.

Said MR. JUSTICE WHITE, speaking for this Court in *Egan vs. Hart*, 165 U. S. 189: "We, however, conclude that not only the very nature of a Writ of Error, but also the rulings of this Court from the beginning, make it clear that on error to a State Court in a chancery case, as in a case at law, when the facts are found by the Court below, this Court is concluded by such findings. The adjudications are collected very fully in *Dower vs. Richards*, and in the subsequent cases above referred to."

And in delivering the opinion in *Chicago, Burlington, etc. Rd. vs. Chicago*, 166 U. S. 246, MR. JUSTICE HARLAN said: "To this may be added that Congress has provided that the final judgment of the highest Court of a State in cases of which this Court may take cognizance, shall be re-examined upon *writ of error*, a process of common law origin, *which removes nothing for re-examination but questions of law arising upon the record.*"

Whether the accused is a fugitive from justice is a question of fact.

Roberts vs. Reilly, 116 U. S. 80.

We have just seen that this question of fact was decided by the Court below against the Plaintiff-in-Error, and that that finding is not reviewable by this Court.

It can not be denied that this Court has the power to examine the Opinions in the Court below to ascertain the grounds of that Court's decision.

Kreiger vs. Shelly R. R., 125 U. S. 44.
Dibble vs. Bellingham Co., 163 U. S. 69.

It can not be contended successfully that the decision below was against the validity of the authority and power exercised under the Constitution of the United States and under section 5278 of the Revised Statutes. There was no question or denial of the validity and binding authority of either the Constitutional provision or of the Act of Congress. Corkran was discharged on the distinct independent ground that he was not a fugitive from justice; the Court below acknowledge the binding authority of the Statute. To be sure the demand of the State of Tennessee for the custody of the prisioner was denied. But this Court has said: "The validity of a Statute is not drawn in question every time rights claimed under it are controverted, nor is the validity of an authority every time an act done by such authority is disputed."

Cook County vs. Calumet, etc. Canal, 138 U. S. 653.

In *Balto. & Pot. R. R. vs. Hopkins*, 130 U. S. 224, it was said: "Whenever the power to enact a Statute * * * is fairly open to denial and is denied, the validity of such Statute is drawn in question, *but not otherwise.*"

Before the Plaintiff-in-Error can successfully claim that there has been any denial of any Federal title, right, privilege or immunity, he must have set up and claimed such title, right, privilege or immunity in the State Court and such claim must appear from the Record to have been so made below.

Brooks vs Missouri, 124 U. S. 394.

Stated shortly, the case is this:

(*a*) The legality of Corkran's detention under the Governor's Warrant of extradition was a question into which the State and Federal Courts in New York had concurrent jurisdiction to enquire.

Robb vs. Connelly, 111 U. S. 639.

(*b*) The State Court in the exercise of this rightful jurisdiction decided the question of fact, *i. e.*, that Corkran was not a fugitive from justice, against the Plaintiff-in-Error. This decision, as already stated, did not in any way impugn the Statute nor any right conferred by it.

It is, therefore, respectfully submitted that this Writ of Error should be dismissed for want of jurisdiction.

There was some discussion in the oral opinion of JUDGE HERRICK in the Court of original jurisdiction (Record, page 11), and in the prevailing opinions of the Court of Appeals (Record, pages 21, 22, 23, 29 and 31), and in the dissenting opinion of JUDGE HAIGHT in this latter Court (Record, page 38) of the power of the Governor of New York to surrender as a fugitive from justice a person who was not corporeally present in the demanding State when the assumed crime was committed, but who was "constructively" present.

It is submitted that there is nothing in the Record to raise any such question.

The Plaintiff-in-Error has seen fit not to enlighten the Court as to the facts alleged in the indictments, as he could easily have done by producing and filing copies of them.

All we know is that the crimes charged are larceny and false pretences. So far as the crime of larceny is concerned, it is submitted that it would be impossible for any mystical or metaphysical doctrine of constructive presence to apply to it. A man could not commit larceny without being corporeally present where the crime was committed. A trespass is of the essence of larceny; the thief must "take and carry away" the thing stolen.

False pretences could, in its nature, be committed by one actually present where the goods were obtained, or by one at a distance acting either through confederates or innocent agents.

But there is nothing in the pleadings or exhibits in this case to justify *the conjecture* that it was intended to charge Corkran with having obtained anything by false pretences when physically absent from the State of Tennessee. The recital in the Governor's Warrant (which until contradicted is *prima facie* to be taken as true, *Roberts vs. Reilly*, 116 U. S. 95; Opinion of JUDGE CULLEN, Record, page 26; Opinion of JUDGE O'BRIEN, Record, page 30,) is "that Charles E. Corkran stands charged in that State (Tennessee) with having committed therein, in the county of Davidson, the crimes of larceny and false pretences;" and the Warrant also states that the demand of the Governor of Tennessee was accompanied by copies of indictments and other documents charging "the said Charles E. Corkran with having committed the said crimes and fled from the said State and taken refuge in the State of New York." (Record, page 5.)

If the English language has any meaning, these recitals show that the Tennessee authorities categorically charge Corkran with having been actually and corporeally present in Tennessee, with having committed crimes therein "in the County of Davidson," and with having then fled from Tennessee.

As truly and pointedly said by JUDGE O'BRIEN in his Opinion delivered in this case: "Not a single fact is before us that raises any question as to the constructive presence of the relator in the demanding State on the dates named in the indictment or that would warrant *even the suspicion* that he committed the crimes charged by means of an innocent agent.

"All that is said upon that subject is pure conjecture *without any fact upon which to build up the speculation.* On the Record before us the relator was presumptively person-

ally present in the demanding State at the dates named, and there took and carried away the property claimed to have been stolen, or he did not and could not have committed the offence charged in that State at all." (Record, page 29.)

A crime is charged to have been committed at a certain time and place. The accused shows by conclusive testimony that for a long period before the time charged, and for a shorter period afterwards, he was far distant from the place where the crime is alleged to have been committed. No other time is suggested and no other place; although the amplest opportunity is given to show some other time and place. The accused on the plainest principles of justice is entitled to an acquittal. It will not do to imagine that he may have been guilty at some other time and place. The fact to be tried is whether the accused was guilty; and facts must be proved by evidence. And when the particulars alleged against him have been entirely disproved, if other particulars are urged, they must be substantiated by evidence, and not rest entirely on conjecture.

It seems to have been asserted below that *Roberts vs. Reilly*, 116 U. S. 80, has some bearing on this question. In that case Roberts, an alleged fugitive from justice, filed an affidavit to the effect that he was not in New York on "the day laid in the indictment, as the date of the offence." 116 U. S. 87. But there were counter affidavits by Thurston and others "giving in detail the circumstances of the alleged offence, and averring that the prisoner had fled from the justice of the State of New York." 116 U. S. 84.

The answer to the contention that Corkran *may* have been *constructively* in Tennessee has already been partially stated. It is only necessary to say that having been charged with *an actual* presence, and *an actual* flight from justice, and having overthrown these charges by proof, if a *constructive* presence and a *constructive* flight from justice are to be urged, there ought, at least, to be proof, of some sort, of

34716

some acts on Corkran's part which would tend to show that he had committed these mystical offences. It ought to be shown that he did something which made him constructively present, and something else which showed that he constructively fled from the State. What facts would have these effects, must largely be left to the imagination.

As was strongly said on this aspect of the case in the Court below (Record, page 33) by JUDGE O'BRIEN: "The relator is claiming the benefit and protection of the laws of this State, which guarantee him his liberty against all unlawful restraint. If he has actually fled from the justice of the demanding State, of course he ought to be surrendered; but it is admitted that he did not, and it is safe to say that no one believes for a moment that he did, except possibly in the same way and in the same sense that Jackson fled from the same State in the case cited (Tennessee vs. Jackson, 36 Fed. Rep. 258). Personal liberty must rest in this State upon a very frail and unsafe basis if this Court can be induced to send the relator to Tennessee upon such a vague and fanciful conjecture as that which is at the foundation of the fiction that he may in fact have committed the crime on the 2d of July, and that the prior dates stated by the prosecuting officer of that State are the result of some error or mistake. When the State of Tennessee, or some one authorized to speak for it, is willing to assure us that the suggestion is based upon fact and not upon fiction, it will be timely then to entertain it, but until then the Courts of this State should treat its solemn admission upon the record according to its fair scope and meaning, which obviously is that the relator was not in the State when the crimes charged were committed. I am in favor of reversing the order."

If, however, we indulge in presumptions and speculations not justified by the Record and assume that the question of the right of the Governor to extradite a person for a crime committed when he was only constructively and not actually present was presented to the Court below, and that such question is now so presented to this Court as to be properly

reviewable, it is submitted that there was no authority in the Governor of New York to order the extradition of Corkran for trial for an offence claimed to have been committed when he was not corporeally present in the State of Tennessee.

The Constitution of the United States (Art. 4, Sect. 2, Sub.-Div. 2,) reads: "A person charged in any State with treason, felony or other crime, *who shall flee from justice*, and be found in another State, shall, on demand of the executive authority of the State *from which he fled*, be delivered up, to be removed to the State having jurisdiction of the crime."

Flight—being a fugitive from justice—is the jurisdictional fact. In speaking of the necessity for an actual flight or *departure* from the demanding State of the accused before he can be said to be a fugitive from justice, JUDGE SEEVERS in delivering the opinion of the Court in *Jones vs. Leonard*, 50 Iowa, 108, said: "It is difficult to see how one can flee who stands still. That there must be *an actual fleeing* we think is clearly recognized by the Constitution of the United States. The words: 'who shall flee' do not include a person who never was in the country from which he is said to have fled."

A great cloud of State decisions enforce the construction of the Constitution that the accused must have been physically present in the demanding State at the time when the assumed crime is alleged to have been committed.

Wilcox vs. Nolze, 34 Ohio St. 520-4.
In re Manchester, 5 California, 237.
Jones vs. Leonard, 50 Iowa, 106.
In re Tod, 12 S. Dakota, 386, 393-4.
In re Mohr, 73 Alabama, 503, 514.
In re Fetter, 23 N. J. L. 311.
In re Voorhees, 32 N. J. L. 150.
Hartman vs. Aveline, 63 Indiana, 345.
Ex parte Knowles, 16 Ky. L. Rep. 263.
In re Greenough, 31 Vermont, 279.

34717

Kingsbury's Case, 106 Mass., 223, 227.
Re Heyward, 1 Sandf., 701.
State vs. Hall, 115 N. C. 811.
Same case, 28 L. R. A. 289.

In this last case, Hall standing within North Carolina murdered a man in Tennessee, by shooting him across the State line. He was acquitted in North Carolina because under the then existing law of that State no provision was made for maliciously and wilfully firing a shot, which struck and killed a man who was beyond the State's jurisdiction. After Hall's acquittal, an attempt was made to extradite him into Tennessee. This was resisted on the ground that he had not been physically present in the State of Tennessee when the alleged crime was committed, and that he therefore could not be a fugitive from the justice of that State. In adopting this view as sound JUDGE AVERY, speaking for the Supreme Court of North Carolina said: "It is not pretended that a single Appellate Court, Federal or State, or a respectable law writer has given any other interpretation to the law than that adopted by us."

The same interpretation of the Constitutional provision was followed by the Governor of Illinois in the attempt to extradite Mr. Storey, Editor of the *Chicago Tribune* into Wisconsin, (3 Central Law Journal, 636); and by the Governor of Maryland in the case of Max Juhn, attempted to be extradited into New York (2 Moore on Extradition, Sect. 585); and by the Governor of New York in the case of Mitchell, attempted to be extradited into New Jersey (4 New York Crim. Rep. 596).

The law is declared in the leading text books to the same effect.

2 Moore on Extradition, Sect. 581.
Spear on Extradition, pages 397, 499.
7 Am. & Eng. Encyclopædia of Law (1st Ed.) 646 and Note 1.
12 Am. & Eng. Encyclopædia of Law (2nd. Ed.) 603 and Note 3.

And the same rule, that there must have been an actual presence in and departure from the demanding State is adopted in the Federal Courts.

In re Samuel Jackson, 2 Flipp. 183, 186.
Same Case, Fed. Cas. No. 7125.
Ex parte Jos. Smith, 3 McLean, 121.
Same Case, Fed. Cas. No. 12968.
Ex parte McKean, 3 Hughes, 25.
U. S. vs. Fowkes, 49 Fed. Rep. 52, 53.
Tennessee vs. Jackson, 36 Fed. Rep. 258.
Same Case, 1 L. R. A. 370.
In re White, 55 Fed. Rep. 54.
Same Case, 5 C. C. A. 29.
Ex parte Reggel, 114 U. S. 651.
Roberts vs. Reilly, 116 U. S. 97.

Mr. Justice Harlan in delivering the opinion of this Court in *Ex parte Reggel*, 114 U. S. 651, said: "Undoubtedly, the Act of Congress did not impose upon the executive authority of the Territory the duty of surrendering the Appellant, unless it was made to appear, in some proper way, that he was a fugitive from justice. In other words, the Appellant was entitled, under the Act of Congress, to insist upon proof that he was *within the demanding State* at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process."

Mr. Justice Matthews in delivering the Opinion of this Court in *Roberts vs. Reilly*, 116 U. S. 97, said: "To be a fugitive from justice, in the sense of the Act of Congress, regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having *within a State* committed that which by its laws constitutes a crime,

when he is sought to be subjected to its criminal process to answer for his offence, he has left its jurisdiction, and is found within the territory of another."

It was also suggested in the Brief for the Plaintiff-in-Error in the Court of Appeals of New York, that the fact that Corkran was in Tennessee on July 2, 1902, and that he, after openly transacting his business there, came home when his business was finished, in some unexplained way, made him a fugitive from justice. The force of this suggestion is not perceived. It is, it is submitted, fully and satisfactorily refuted by JUDGE CULLEN in his Opinion in the Court below (Record, page 22), where he said: "If the relator was not otherwise subject to extradition to the State of Tennessee, because he was not personally present in that State at the commission of the alleged offenses, his subsequent presence in the State for a single day, nearly a year before the institution of any prosecution against him, could give that State no right to require his surrender. The question is whether he is a fugitive from justice, not whether the Courts of the State of Tennessee have jurisdiction of his alleged offenses. That jurisdiction they had at all times, if at all, provided they could secure his person. I am at a loss to imagine how a man's voluntary visit to a State can constitute him a fugitive from the State when he was not such before. I should consider it as having exactly the contrary effect. If there be any force in this occurrence it must be not in his going into the State, but in his failing to remain there. *It is not, however, suggested* that he in any respect offended against the laws of Tennessee *while present there.* He went there for a specific purpose, and his business accomplished, immediately left. It is not pretended that his stay was curtailed or he left the State on account of any suspicion of a prosecution. Would he have been liable to extradition because on a journey to New Orleans, his route passed through the State of Tennessee? Such a result seems to me utterly unreasonable. No distinction can be drawn between the two cases."

What JUDGE O'BRIEN said (Record, pages 32, 33), is also in point: "That must follow from the admission that the relator was not in the demanding State at the times stated in the indictment as the dates when the alleged crimes were committed. On the hearing of this case upon the return of the writ, the State of Tennessee could have shown all the facts and circumstances of the alleged crime for which it had demanded the surrender to it of the person of the relator, as this State did it in the Roberts case (*supra.*) But instead of taking that course, all the facts and circumstances are left clouded in mystery, except so far as they are disclosed by the admissions referred to. When it admitted that the relator was not in the State at the times laid in the indictment, and gave no other light as to the facts, the case for detention failed. The State of Tennessee does not ask for the surrender of the relator on the ground that he committed any crime in that State on the 2d day of July, 1901, nor does it even suggest that its prosecuting officer made any mistake in stating the 24th of June as the true date of the commission of the offense."

English decisions on International extradition where persons have been surrendered who were charged with the crime of obtaining money under false pretences by letters written from beyond the jurisdiction of the demanding country, have no bearing on the question of the right to an interstate extradition in this country under the Constitution and Act of Congress, because the language of the English Extradition Act (33 Victoria, chapter 52), is very different from the language of the Constitution and of the Act of Congress.

The case of *Reg vs. Jacobi et al.*, 46 L. T. N. S. 595, was referred to in the Brief of the Counsel for the Plaintiff-in-Error, filed in the Court below. That was a case where it was charged that the accused by a letter written in the Netherlands to a person in Germany fraudulently procured goods to be shipped to their order from Germany to the Netherlands.

The report states (46 L. T. N. S., page 595), that "in December, 1879, Jacobi and Hiller absconded to England."

The words used in 33 Victoria, chapter 52, section 10, in describing a person liable to be extradicted (46 L. T. N. S. 594), were "fugitive criminal."

These words are judicially defined in *Reg vs. Nillens*, 53 L. J. Mag. Prob. Div. and Adm., page 158. That was the case of a person who, while in England, procured goods to be delivered to his order in Hamburg, by means of a fraudlent letter written from England to another person in Germany.

In delivering his opinion in this case CAVE, J., after stating that the term used to describe the persons to be surrendered is "fugitive criminal" and after calling attention to the definition of "fugitive criminal" furnished in Section 26 of the English Act as meaning "any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State, who is in or is suspected of being in some part of her Majesty's dominions," adds: "It is clear then that the crime was committed in a foreign State. But against this, it is urged that to come within the definition, he must have fled from that State to some part of her Majesty's dominions, but there is nothing of that in the Section. The words are: 'who is in or is suspected of being in some part of her Majesty's dominions,' and I cannot give these words other than their plain meaning. The object of this definition is clear, for if it were otherwise, it would be possible for a man in England to commit a crime in a foreign country, for which, at least in certain cases, he could not be tried in England, and yet not be liable to be extradicted. The Legislature, therefore, in dealing with cases of the escape of a criminal from another country to this, also included the case of a person in this country committing a crime in another."

53 L. J. Mag. Prob. Div. and Adm., page 158.

Nor are cases in the Courts of this country on International Extradition precedents in point. Whether a person apprehended in this country and sought to be extradited to some foreign country, shall be delivered up depends, of course, upon the terms of the treaty with that country. The provisions of these several treaties are, it is believed, seldom, if ever, in the language of the Constitution providing for interstate extradition. For example, Article X of the Treaty with Great Britain of 1842 in providing for the extradition of criminals, stipulates as follows: "It is agreed that the United States and her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers or authorities respectively made, deliver up to justice all persons who being charged with the crime of murder * * *, committed within the jurisdiction of either, shall seek an asylum *or shall be found within* the territories of the other."

So in the Treaty of 1861 with Mexico, it is provided in Section 1: "It is agreed that the contracting parties shall on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who being accused of the crimes enumerated in article third of the present Treaty, committed within the jurisdiction of the requiring party, shall seek an asylum *or shall be found within the territories* of the other."

It is respectfully submitted that the doctrine that there can be a constructive presence in a State and a constructive flight therefrom has no more foundation in law, than has the theory that there is any charge of a crime committed by Corkran when not physically and actually present in the State of Tennessee, any foundation in the facts of this case, as disclosed by the Record. Both are mere presumptions, without anything to support them.

From the concluding paragraph of the dissenting opinion of JUDGE HAIGHT (Record, page 38), it would seem that that learned Judge thought that *public policy* required that

34720

there should be some means of arresting persons in one State charged with having by the use of the mail or the telegraph obtained fraudulently money, goods or credits from persons in another State.

In answer to this, it is respectfully suggested that the question is not one *of public policy*, but *of power* under the Constitution and Act of Congress.

This must, of course, be ascertained by turning to the words of the Constitution and of the Act of Congress, and ascertaining what they meant; not what we may now consider they ought to have meant.

In delivering the Opinion of this Court in *U. S. vs. Chase*, 135 U. S. 262, MR. JUSTICE LAMAR observed: "Ashurst J. said in *Jones vs. Smart*, 1 T. R. 51: 'It is safer to adopt what the Legislature have actually said than to suppose what they meant to say.' In the *Queensborough Cases*, 1 Bligh. 497, Lord Redesdale said: 'The proper mode of disposing of difficulties arising from a literal construction is by an Act of Parliament and not by the decision of Court.'"

If, however, the question of supposed public policy were entitled to any weight in discussing a question of the meaning of a clause in the Constitution affecting the liberty and safety of the citizen, it might be urged that the collection of civil debts by a threat of criminal prosecution, is a practice not infrequently indulged by attorneys of the baser sort, and by business men of not very high principle, and that any rule which rendered possible the transportation of persons for trial to a distant portion of the Union, whenever there is a business dispute as to the truth of a warranty or representation made in correspondence, would vastly encourage this species of blackmail. That compounding a felony is a crime, seems to be an obsolete rule of law, in certain enterprising commercial centres.

What was said by JUDGE KEY in delivering his judgment in *Tennessee vs. Jackson*, 36 Fed. Rep. 260 is in point:

"Jackson was not a fugitive. He had not in all his life been in Tennessee; had never fled from it; and his case did not fall within the positive terms of this law. The oath of the detective was false, and the Governors of the two States imposed upon. The whole proceeding was a fraud upon the law. If this arrest and imprisonment are to be maintained, the opportunities for wrong and abuse of this law will be great and widespread. Commercial transactions are largely conducted by mail and telegraph. If the seller at one end of the line, and the buyer at the other, with the aid of detectives in cases of dispute and controversy between them are to be allowed, under such proceedings as these, to have the citizens of one State carried to another State for trial under the false allegation that the person charged has fled, instances of oppression may not be few."

The inquiry in this case is whether Corkran was in the State of Tennessee "at the time he is alleged to have committed the crime charged." *Regell's Case*, 114 U. S. 651. This was the *fact to be proved.* It has been solemnly decided by the State Court of last resort that *the fact has been disproved.* Where is the Federal question before this Court?

This is a most remarkable case. The Warrant no where states that the governor of New York *found as a fact* that Corkran was a fugitive from justice; nor that any *sworn evidence* of that fact was submitted to him; nor that he had any definite or satisfactory evidence on this subject of any sort before him. All that a fair reading of the Warrant (Record, page 5) discloses on the subject of any flight from justice by Corkran is that the governor of Tennessee "represents" him to be a fugitive and that copies of an indictment "and other documents" "charge" him with being such a fugitive. A Governor of a State causes the arrest of a man upon a Warrant, which does not charge that the fact exists which would make him liable to arrest, *i. e.*, that he is a fugitive from justice. In the course of the proceedings this fact is no where even indicated. And the Court com-

petent to decide the question finds that it is disproved. Yet the record is brought to this Court.

For all these reasons it is respectfully submitted that this Writ of Error should be dismissed for want of jurisdiction; and that failing this, the judgment should be affirmed on the merits.

WILLIAM S. BRYAN, JR.,
A. DER. SAPPINGTON,
Counsel for Defendant-in-Error.

POSTSCRIPT.

Since the preparation of the above Brief, the Brief of the Plaintiff-in-Error has been received from the Clerk of this Court.

The attention of the Court is called to the fact that the Brief of the Plaintiff-in-Error contains numerous statements as to the supposed facts which are not justified by nor found in the Record.

If it were true that Corkran had hearings before the Governor of New York, or that at those hearings he (as stated on page 26 of the Brief of the Plaintiff-in-Error) "made several statements with reference to the matter, none of which were taken down, but all of which was material, and have great influence with the Governor in coming to his decision," it is respectfully suggested that if the Plaintiff-in-Error considered that such alleged hearing before the Governor or such alleged statements by Corkran had any possible bearing on the Federal questions, supposed to be presented in this Court, the fact that the hearings were had or the statements were made, should have been proved in

the Court of first instance and should so appear from the Record; and that as this was not done, they can not now with propriety be relied on or stated in this Court.

The statement in the Brief of the Plaintiff-in-Error, page 6, that the indictments presented to the Governor of New York were "supported by the certificate of the attorney general of the State of Tennessee, that the indictments were properly found and *the charge made in good faith*, and it was not found for the purpose of collecting a debt" finds no justification or support in the Record before this Court.

If this Court felt itself at liberty to go beyond the Record, and to consider a question of fact involving in no way any Federal question, it is respectfully suggested that the affidavit of Mr. Johnson sent to the Clerk to be filed in opposition to the Motion to advance this case for hearing, renders it very probable that this whole proceeding is a mere blackmailing scheme, instituted and carried on by the Union Bank and Trust Company of Nashville, Tennessee, for the purpose of collecting a debt, and that if the Attorney General of Tennessee really gave such a certificate, as he is stated to have given, he was imposed upon.

APPENDIX.

STATE OF OHIO, } ss.:
HAMILTON COUNTY. }

Edgar M. Johnson being duly sworn, on oath deposes and says that he is an attorney and counsellor at law, and a member of the firm of Stricker & Johnson, of Cincinnati, Ohio; that the said firm are attorneys for the American Hardwood Company, a bankrupt; that on Saturday, January 11, 1902, deponent was in Chattanooga, Tenn., for the purpose of arguing a motion for the appointment of Receivers in the bankruptcy proceedings filed by the Union Bank and Trust Company of Nashville, Tenn. et al., against the American Hardwood Company; that C. E. Barthell, of Nashville, Tenn., appeared as the attorney for the Union Bank and Trust Company of Nashville.

Deponent says that on the evening of January 11, 1902, he was seated with said Barthell in the office of the Read House, Chattanooga, Tenn., informally discussing the various phases of the American Hardwood Bankruptcy proceedings and what the creditors of said bankrupt might ultimately expect to realize on their claims. Deponent said, in the course of said conversation, that he thought the creditors might get from twenty-five to thirty-five cents on the dollar, whereupon said Barthell volunteered the statement that he expected to collect one hundred cents on the dollar for his client, the Union Bank and Trust Company. Thinking that the remark was made facetiously, deponent then asked said Barthell how he proposed to get it, to which he (Barthell) answered that he hoped to be able to indict Corkran (referring to Charles E. Corkran.) Said Barthell also stated that he thought Corkran had money, and that he would be willing to pay whatever might be necessary should he (Barthell) succeed in having him indicted in Nash-

ville. Whereupon deponent asked said Barthell of what crime Corkran had been guilty, to which said Barthell replied that he (Barthell) was no criminal lawyer, but that he had consulted some of the best criminal lawyers in Tennessee, who had informed him that they thought Corkran had been very cautious, but that "his foot had slipped on one or two occasions."

Further deponent saith not.

EDGAR M. JOHNSON.

Sworn to before me and subscribed in my presence this 27th day of March, 1902.

[L. S.] NATHANIEL WRIGHT,
Notary Public, Hamilton County, Ohio.

Supreme Court of the United States.

No. 492.—October Term, 1902.

James L. Hyatt, as Chief of Police of the City of Albany, N. Y., Plaintiff in Error, *vs.* The People of the State of New York on the Relation of Charles E. Corkran. | In error to the Court of Appeals of the State of New York.

[February 23, 1903.]

This proceeding by *habeas corpus* was commenced by the relator, defendant in error, to obtain his discharge from imprisonment by the plaintiff in error, the chief of police in the city of Albany, State of New York, who held the relator by means of a warrant issued in extradition proceedings by the governor of New York. The justice of the Supreme Court of New York, to whom the petition for the writ was addressed, and also upon appeal, the Appellate Division of the Supreme Court of New York, refused to grant the relator's discharge, but the Court of Appeals reversed their orders and discharged him. (172 N. Y. 176.) A writ of error has been taken from this court to review the latter judgment.

The relator stated in his petition for the writ that he was arrested and detained by virtue of a warrant by the governor of New York, granted on a requisition from the governor of Tennessee, reciting that relator had been indicted in that State for the crime of grand larceny and false pretenses, and that he was a fugitive from the justice of that State; that the warrant under which he was held showed that the crimes with which he was charged were commited in Tennessee, and the relator stated that nowhere did it appear in the papers that he was personally present within the State of Tennessee at the time the alleged crimes were stated to have been committed; that the governor had no jurisdiction to issue his warrant in that it did not appear before him that the relator was a fugitive from the justice of the State of Tennessee, or had fled therefrom; that it did not appear that there was any evidence that relator was personally or continuously present in Tennessee when the crimes were alleged to have been committed; that it appeared on the face of the indictments accompanying the requisition that no crime under the laws of Tennessee was charged or had been committed. Upon this petition the writ was issued and served.

The return of the defendant in error, the chief of police, was to the effect that the relator was held by virtue of a warrant of the governor of New York, and a copy of it was annexed.

The governor's warrant reads as follows:

STATE OF NEW YORK,
Executive Chamber.

"The governor of the State of New York to the chief of police, Albany, N. Y., and the sheriffs, undersheriffs and other officers of and in the several cities and counties of this State authorized by subdivision 1 of section 827 of the Code of Criminal Procedure to execute this warrant:

"It having been represented to me by the governor of the State of Tennessee that Charles E. Corkran stands charged in that State with having committed therein, in the county of Davidson, the crimes of larceny and false pretences, which the said governor certifies to be crimes, under the laws of the said State, and that the said Charles E. Corkran has fled therefrom and taken refuge in the State of New York; and the said governor of the State of Tennessee having, pursuant to the Constitution and laws of the United States, demanded of me that I cause the said Charles E. Corkran to be arrested and delivered to Vernon Sharpe, who is duly authorized to receive him into his custody and convey him back to the said State of Tennessee; which said demand is accompanied by copies of indictment and other documents duly certified by the said governor of the State of Tennessee to be authentic and duly authenticated and charging the said Charles E. Corkran with having committed the said crimes and fled from the said State and taken refuge in the State of New York;

"You are hereby required to arrest and secure the said Charles E. Corkran wherever he may be found within this State and thereafter and after compliance with the requirements of section 827 of the Code of Criminal Procedure to deliver him into the custody of the said Vernon Sharpe, to be taken back to the said State from which he fled, pursuant to the said requisition; and also to return this warrant and make return to the executive chamber within thirty days from the date hereof of all your proceedings had thereunder, and of the facts and circumstances relating thereto.

"Given under my seal and the privy seal of the State, at the capitol in the city of Albany, this 13th day of March, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. B. ODELL, Jr.

By the Governor: JAMES G. GRAHAM,
Secretary to the Governor."

No other paper was returned by the chief of police bearing upon his right to detain the relator. Upon the filing of the return the relator traversed it in an affidavit, in which he denied that he had committed either the crime of larceny or false pretenses, or any other crime, in the State of Tennessee. He denied that he was within the State of Tennessee at the times mentioned in the indictment upon which the requisition of the governor was issued; he alleged that he had read the indictments before the governor of the State of New York, upon which the warrant of arrest was issued, and that they charged him with the commission of the crime of larceny and false pretenses on the 20th and 30th days of April, the 8th day of May and the 17th and the 24th days of June, 1901. The relator in his affidavit also asserted that he was not in the State of Tennessee at

any time in the months of March, April, May or June, 1901, or at any time for more than a year prior to the month of March, 1901, and he denied that he had fled from the State of Tennessee or that he was a fugitive from the justice of that State. He further therein stated that he had heard read the papers accompanying the requisition of the governor of Tennessee to the governor of New York, and that those papers did not contain any evidence or proof that he had been in the State of Tennessee at any stated time since the 26th and 27th days of May, 1899, and they contained no evidence or proof that he was in the State of Tennessee on any day in any of the months set forth in the indictments when the crime or crimes were alleged to have been committed.

Upon the hearing the following paper signed by the respective attorneys for the parties was filed:

"It is conceded that the relator was not within the State of Tennessee between the first day of May, 1899, and the first day of July, 1901. It is also conceded that the relator was in the State of Tennessee on the 2d day of July, 1901."

There is also another stipulation in the record, signed by the attorneys, and reading as follows:

"The following additional facts are hereby conceded, and the same shall be incorporated in the appeal record herein, as a part thereof, and shall constitute a part of the record upon which the Appellate Division may hear and determine the appeal herein; *i. e.*,—

"It is hereby stipulated by and between the parties to the above entitled special proceeding that three indictments were attached to the requisition papers sent by the governor of the State of Tennessee to the governor of the State of New York for the extradition of Charles E. Corkran; that each of the said indictments was found on the 26th day of February, 1902, and that the alleged crimes were charged in said indictments to have been committed on the 1st day of May, 1901, on the 8th day of May, 1901, and on the 24th day of June, 1901, respectively."

Upon the hearing before the judge on March 17, 1902, the relator was sworn without objection, and testified that he had been living in the State of New York for the past fourteen months; that his residence when at home was in Lutherville, Maryland; that he was in the city of Nashville, in the State of Tennessee, on July 2, 1901, and (under objection as immaterial) had gone there on business connected with a lumber company in which he was a heavy stockholder; that he arrived in the city on July 2, in the morning, and left about half-past seven in the evening of the same day, and while there he notified the Union Bank and Trust Company (the subsequent prosecutor herein) that the resignation of the president of the lumber company had been demanded and would probably be accepted that day. After such notification, and on the same day, the resignation was obtained, and the Union Bank and Trust Company was notified thereof by the relator before leaving the city on the evening of that day;

that he passed through the city of Nashville on the 16th or 17th of July thereafter on his way to Chattanooga, but did not stop at Nashville at that time, and had not been in the State of Tennessee since the 16th day of July, 1901, at the time he went to Chattanooga; that he had never lived in the State of Tennessee, and had not been in that State between the 26th or 27th of May, 1899, and the 2d day of July, 1901.

Upon this state of facts the judge, before whom the hearing was had, dismissed the writ and remanded the relator to the custody of the defendant Hyatt, as chief of police. This order was affirmed without any opinion by the Appellate Division of the Supreme Court, but, as stated, it was reversed by the Court of Appeals and the relator discharged.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

By clause 2 of section 2 of Article IV of the Constitution of the United States it is provided:

"A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

It was held in *Commonwealth of Kentucky* v. *Dennison, Governor*, (24 How. 66, 104,) that this provision of the Constitution was not self-executing, and that it required the action of Congress in that regard. Congress did act by passing the statute, approved February 12, 1793. (1 Stat. 302.) The substance of that act is reproduced in section 5278 of the Revised Statutes, as follows:

"SEC. 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory."

The proceedings in this case were under this section, and the warrant issued by the governor was sufficient *prima facie* to justify the arrest of the

relator and his delivery to the agent of the State of Tennessee. Certain facts, however, must appear before the governor has the right to issue his warrant. As was said in *Roberts* v. *Reilly*, (116 U. S. 80, 95,) it must appear to the governor, before he can lawfully comply with the demand for extradition, that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or an affidavit, &c., and that the person demanded is a fugitive from the justice of the State the executive authority of which makes the demand. It was also stated in the same case that the question whether the person demanded was substantially charged with a crime or not was a question of law and open upon the face of the papers to judicial inquiry upon application for a discharge under the writ of *habeas corpus*; that the question whether the person demanded was a fugitive from the justice of the State was a question of fact which the governor upon whom the demand was made must decide upon such evidence as he might deem satisfactory. How far his decision might be reviewed judicially in proceedings in *habeas corpus*, or whether it was conclusive or not, were, as stated, questions not settled by harmonious judicial decisions nor by any authoritative judgment of this court, and the opinion continues as follows:

"It is conceded that the determination of the fact by the executive of the State in issuing the warrant of arrest, upon a demand made upon that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof."

In *People* v. *Brady*, (56 N. Y. 182,) it was held that the courts have jurisdiction to interfere by writ of *habeas corpus* and to examine the grounds upon which an executive warrant for the apprehension of an alleged fugitive from justice from another State is issued, and in case the papers are defective and insufficient, to discharge the prisoner.

In the case before us the New York Court of Appeals held that if upon the return to the writ of *habeas corpus* it is clearly shown that the relator is not a fugitive from justice, and there is no evidence from which a contrary view can be entertained, the court will discharge the person from imprisonment, but that mere evidence of an alibi, or evidence that the person demanded was not in the State as alleged, would not justify his discharge, where there was some evidence on the other side, as *habeas corpus* was not the proper proceeding to try the question of the guilt or innocence of the accused. And the court also held that the conceded facts showed the absence of the accused at the time when the crimes, if ever, were committed, and that the demand was in truth based upon the doctrine that a constructive presence of the accused in the demanding State at the time of the alleged commission of the crime was sufficient to authorize the demand for his surrender.

We are of opinion that the warrant of the governor is but *prima facie* sufficient to hold the accused, and that it is open to him to show by admissions, such as are herein produced, or by other conclusive evidence, that the charge upon which extradition is demanded assumes the absence of the accused person from the State at the time the crime was, if ever, committed. This is in accordance with the authorities in the States, cited in the opinion of Judge Cullen in the New York Court of Appeals, and is, as we think, founded upon correct principles. (*Robb* v. *Connolly*, 111 U. S. 624, recognizing authority of States to act by *habeas corpus* in extradition proceedings.)

If upon a question of fact made before the governor, which he ought to decide, there were evidence *pro* and *con*. the courts might not be justified in reviewing the decision of the governor upon such question. In a case like that, where there was some evidence sustaining the finding, the courts might regard the decision of the governor as conclusive. But here as we have the testimony of the relator (uncontradicted) and the stipulation of counsel as to what the facts were, we have the right and it is our duty on such proof and concession to say whether a case was made out within the Federal statute justifying the action of the governor. It is upon the statute that the inquiry must rest.

In the case before us it is conceded that the relator was not in the State at the various times when it is alleged in the indictments the crimes were committed, nor until eight days after the time when the last one is alleged to have been committed. That the prosecution on the trial of such an indictment need not prove with exactness the commission of the crime at the very time alleged in the indictment is immaterial. The indictments in this case named certain dates as the times when the crimes were committed, and where in a proceeding like this there is no proof or offer of proof to show that the crimes were in truth committed on some other day than those named in the indictments, and that the dates therein named were erroneously stated, it is sufficient for the party charged to show that he was not in the State at the times named in the indictments, and when those facts are proved so that there is no dispute in regard to them, and there is no claim of any error in the dates named in the indictments, the facts so proved are sufficient to show that the person was not in the State when the crimes were, if ever, committed.

The New York Court of Appeals has construed the stipulation as conceding these facts, and we think that its construction of the stipulation is the correct one.

It is, however, contended that a person may be guilty of a larceny or false pretense within a State without being personally present in the State at the time, therefore the indictments found were sufficient justification for the requisition and for the action of the governor of New York thereon.

This raises the question whether the relator could have been a fugitive from justice when it is conceded he was not in the State of Tennessee at the time of the commission of those acts for which he had been indicted, assuming that he committed them outside of the State.

The exercise of jurisdiction by a State to make an act committed outside its borders a crime against the State is one thing, but to assert that the party committing such act comes under the Federal statute, and is to be delivered up as a fugitive from the justice of that State, is quite a different proposition.

The language of section 5278, R. S., provides, as we think, that the act shall have been committed by an individual who was at the time of its commission personally present within the State which demands his surrender. It speaks of a demand by the executive authority of a State for the surrender of a person as a fugitive from justice, by the executive authority of a State *to which such person has fled*, and it provides that a copy of the indictment found, or affidavit made before a magistrate of any State, charging the person demanded with having committed treason, &c., certified as authentic by the governor or chief magistrate of the State or Territory *from whence the person so charged has fled*, shall be produced, and it makes it the duty of the executive authority of the State *to which such person has fled* to cause him to be arrested and secured. Thus the person who is sought must be one who has fled from the demanding State, and he must have fled (not necessarily directly) to the State where he is found. It is difficult to see how a person can be said to have fled from the State in which he is charged to have committed some act amounting to a crime against that State, when in fact he was not within the State at the time the act is said to have been committed. How can a person flee from a place that he was not in? He could avoid a place that he had not been in; he could omit to go to it; but how can it be said with accuracy that he has fled from a place in which he had not been present? This is neither a narrow nor, as we think, an incorrect interpretation of the statute. It has been in existence since 1793, and we have found no case decided by this court wherein it has been held that the statute covered a case where the party was not in the State at the time when the act is alleged to have been committed. We think the plain meaning of the act requires such presence, and that it was not intended to include, as a fugitive from the justice of a State, one who had not been in the State at the time when, if ever, the offense was committed, and who had not, therefore in fact, fled therefrom.

In *Ex parte Reggel*, (114 U. S. 642, 651,) it was stated by Mr. Justice Harlan, in speaking for the court:

"The only question remaining to be considered relates to the alleged want of competent evidence before the governor of Utah at the time he issued the warrant of arrest to prove that the appellant was a fugitive

from the justice of Pennsylvania. Undoubtedly the act of Congress did not impose upon the executive authority of the Territory the duty of surrendering the appellant, unless it was made to appear, in some proper way, that he was a fugitive from justice. In other words, the appellant was entitled, under the act of Congress, to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process. The statute, it is to be observed, does not prescribe the character of such proof; but that the executive authority of the Territory was not required, by the act of Congress, to cause the arrest of appellant, and his delivery to the agent appointed by the governor of Pennsylvania, without proof of the fact that he was a fugitive from justice, is, in our judgment, clear from the language of that act. Any other interpretation would lead to the conclusion that the mere requisition by the executive of the demanding State, accompanied by the copy of an indictment, or an affidavit before a magistrate, certified by him to be authentic, charging the accused with crime committed within her limits, imposes upon the executive of the State or Territory where the accused is found the duty of surrendering him, although he may be satisfied, from incontestible proof, that the accused had, in fact, never been in the demanding State, and therefore could not be said to have fled from its justice. Upon the executive of the State in which the accused is found rests the responsibility of determining, in some legal mode, whether he is a fugitive from the justice of the demanding State. He does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him, by competent proof, that the accused is, in fact, a fugitive from the justice of the demanding State."

To the same effect is *Roberts* v. *Reilly*, (116 U. S., *supra.*) In that case the issue was made about the presence of the party in the demanding State at the time the act was alleged to have been committed, and there was direct and positive proof before the governor of Georgia, upon whom the demand had been made, and there was no other evidence in the record which contradicted it. It was said (p. 97):

"The appellant, in his affidavit, does not deny that he was in the State of New York about the date of the day laid in the indictment, when the offense is alleged to have been committed, and states, by way of inference only, that he was not in that State on that very day; and the fact that he has not been within the State since the finding of the indictment is irrelevant and immaterial."

It is clear that it was regarded by the court as essential that the person should have been in the State which demanded his surrender at the time of the commission of the offense alleged in the affidavit or indictment, and that it was a fact jurisdictional in its nature, without which he could not be proceeded against under the Federal statute.

Cook v. *Hart*, (146 U. S. 183,) decides nothing to the contrary. In that case the party was arrested in Illinois on account of a crime which, it was alleged, had been committed by him in Wisconsin. He sued out a writ of *habeas corpus* in Illinois to test the legality of his arrest under the circumstances appearing in the case. Upon the hearing the court decided the

arrest to be legal, and the party arrested acquiesced in this disposition of the case and made no attempt to obtain a review of the judgment in a superior court. It was not until after his arrival in Wisconsin, whither he was taken by virtue of the warrant issued by the governor of Illinois, and after his trial had begun in Wisconsin, that he made application to the Circuit Court of the United States in Wisconsin to be released upon *habeas corpus*, upon the ground he had originally urged, that he was not a fugitive from justice within the meaning of the Constitution and laws of the United States. That court decided against him, holding that he had been properly surrendered. This court said that, assuming that the question might be jurisdictional when raised before the executive or the courts of the surrendering State, that it was presented in a somewhat different aspect after the person had been delivered to the agent of the demanding State, and had actually entered the territory of that State and was held under the process of its courts. And it was said that the authorities tended to support the theory that the executive warrant has spent its force when the accused has been delivered to the demanding State; that it is too late for him to object even to jurisdictional defects in his surrender, and that he was rightfully held under the process of the demanding State. Whether the claim made by the party brought to Wisconsin that he was illegally arrested in Illinois was well founded or not, this court did not feel called upon to consider, or to review the propriety of the decision of the court below, and this on the ground that it was proper to await until the State court had finally acted upon the case, and then to require the accused to sue out his writ of error from this court to the highest State court, where a decision could be had, instead of determining the question summarily on *habeas corpus*.

It is contended, however, that there are cases in this court which sustain the proposition maintained by the plaintiff in error herein, and *Kentucky* v. *Dennison*, (*supra*,) is referred to as authority. It is therein held that the words "treason, felony, or other crime," spoken of in the Constitution, included every offense forbidden and made punishable by the laws of the State where the offense is committed, and it is therefore argued that as an act committed outside its borders may, under certain circumstances, become a crime against the State, a person thus committing such an act comes within the meaning of the Constitution, and should be surrendered upon demand of the governor of the State whose law he is alleged to have violated.

On looking at that case it is seen that the facts were wholly different, and the court had no such case as the one before us in mind. The party against whom the demand was made had committed the crime, as alleged, within the State of Kentucky, and no question arose as to his liability to be returned to Kentucky for any act done by him outside its borders. The governor of Ohio, upon whom the demand was made, acting under

the advice of his attorney general, refused to surrender the fugitive because the crime alleged was neither treason nor felony at common law, nor was it one which was regarded as a crime by the usages and laws of civilized nations, and the governor was advised that obviously a line must be somewhere drawn distinguishing offenses which did from offenses which did not fall within the scope of the power granted by the Constitution. It was in regard to this contention that this court held as stated. Mr. Chief Justice Taney, delivering the opinion of the court said, (page 99):

"The words 'treason, felony, or other crime,' in their plain and obvious import, as well as in their legal and technical sense, embrace every act forbidden and made punishable by a law of the State. The word 'crime' of itself includes every offense, from the highest to the lowest in the grade of offenses, and includes what are called 'misdemeanors,' as well as treason and felony. (4 Bl. Com. 5, 6, and note 3, Wendall's edition.) But as the word 'crime' would have included treason and felony, without specially mentioning those offenses, it seems to be supposed that the natural and legal import of the word, by associating it with those offenses, must be restricted and confined to offenses already known to the common law and to the usage of the nations, and regarded as offenses in every civilized community, and that they do not extend to acts made offenses by local statute growing out of local circumstances, nor to offenses against ordinary police regulations. This is one of the grounds upon which the governor of Ohio refused to deliver Lago, under the advice of the attorney general of the State.

"But this inference is founded upon an obvious mistake as to the purposes for which the words 'treason and felony' were introduced. They were introduced for the purpose of guarding against any restriction of the word 'crime,' and to prevent this provision from being construed by the rules and usages of independent nations in compacts for delivering up fugitives from justice.

* * * * * *

"This compact, engrafted in the Constitution, included, and was intended to include, every offense made punishable by the law of the State in which it was committed, and that it gives the right to the executive authority of the State to demand the fugitive of the executive authority of the State in which he is found; that the right given to 'demand' implies that it is an absolute right; and it follows that there must be a correlative obligation to deliver, without any reference to the character of the crime charged, or to the policy or laws of the State to which the fugitive has fled."

The court, however, held that while it was the duty of the executive authority of Ohio under the circumstances to deliver the person demanded, and that such duty was merely ministerial and the governor had no right to exercise any discretionary power as to the nature or character of the crime charged in the indictment, yet it was also held that the Federal courts had no means to compel the governor to perform the moral obligation of the State under the compact in the Constitution, and that the courts could not coerce the State executive or other State officer as such to

perform any duty by act of Congress. On that ground the motion for a mandamus to compel the governor of Ohio to issue his warrant was refused. Nothing in that case can be regarded as any authority for the proposition contended for here. The case assumed the presence of the party in the State at the time of the alleged commission of the crime. The question was whether upon such assumption the executive of the State upon whom the demand was made could examine as to the character of the crime and refuse to deliver up, in his discretion.

To the same effect is *Ex parte Reggel*, (*supra.*) In that case the objection was made in the court of original jurisdiction that there could be no valid requisition based upon an indictment for an offense less than a felony. It was held that such view was erroneous, and *Kentucky* v. *Dennison*, (*supra,*) was cited in support of that proposition, yet it was in this very case of Reggel that the remarks already quoted were made, that the person demanded was entitled to insist upon proof that he was within the demanding State at the time that he is charged to have committed the crime, and subsequently withdrew therefrom to another jurisdiction, so that he could not be reached by the criminal process of the State where the act was committed.

Many State courts before whom the question has come have held that a merely constructive presence in the demanding State at the time of the alleged commission of the offense was not sufficient to render the person a fugitive from justice; that he must have been personally present within the State at the time of the alleged commission of the act, or else he could not be regarded as a fugitive from justice. Spear and also Moore on Extradition are to the same effect. Those authorities and text writers are referred to in the margin.*

In the case of *In re White*, (55 Fed. Rep. 54, 58,) in the United States Circuit Court of Appeals for the Second Circuit, it was said by Lacombe, circuit judge, that it was proper to inquire upon *habeas corpus* whether the prisoner was in fact within the demanding State when the alleged crime was committed, for if he were not it could not be properly held that he had fled from it.

The subsequent presence for one day (under the circumstances stated above) of the relator in the State of Tennessee, eight days after the alleged commission of the act, did not, when he left the State, render him a fugitive

---

* Wilcox *v.* Nolze, (1878) 34 Ohio St. 520, 524; Jones *v.* Leonard, (1878) 50 Ia., 106; In re Mohr, (1883) 73 Ala. 503, 314; In re Fetter, (1852) 23 N. J. L. 311; Hartman *v.* Aveline, (1878) 63 Ind. 345; Ex parte Knowles, (1894) 16 Ky. Law Reporter, 263; Kingsbury's Case, (1870) 106 Mass. 223, 227; State *v.* Hall, (1894) 115 N. C. 811; 2 Moore on Extradition, secs. 579, 581, 584; Spear on Extradition 310 et seq.; Cooley's Con. Lim. 4th ed. 21, note 1; 3 Crim. Law Reporter, 806 et seq. published, 1882.

from justice within the meaning of the statute. There is no evidence or claim that he then committed any act which brought him within the criminal law of the State of Tennessee, or that he was indicted for any act then committed. The proof is uncontradicted that he went there on business, transacted it and came away. The complaint was not made nor the indictments found until months after that time. His departure from the State after the conclusion of his business cannot be regarded as a fleeing from justice within the meaning of the statute. He must have been there when the crime was committed, as alleged, and if not, a subsequent going there and coming away is not a flight.

We are of opinion that as the relator showed without contradiction and upon conceded facts that he was not within the State of Tennessee at the times stated in the indictments found in the Tennessee court, nor at any time when the acts were, if ever committed, he was not a fugitive from justice within the meaning of the Federal statute upon that subject, and upon these facts the warrant of the governor of the State of New York was improperly issued, and the judgment of the Court of Appeals of the State of New York discharging the relator from imprisonment by reason of such warrant must be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.